

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

THE DE NOVO APPLICATION OF THE  
NEW MEXICO OIL CONSERVATION DIVISION  
FOR A COMPLIANCE ORDER AGAINST XERIC  
OIL & GAS CORPORATION

CASE NO. 14106

CASE NO. 13957, CONT. TO MARCH 12, 2009  
CASE NO. 14149, CONT. TO MARCH 12, 2009  
CASE NO. 14150, CONT. TO MARCH, 2009  
CASE NO. 14124, REMANDED TO EXAMINERS  
CASE NO. 14145, DISMISSED  
CASE NO. 14134, CONT. TO APRIL 9, 2009  
CASE NO. 14141, CONT. TO APRIL 9, 2009  
CASE NO. 14278, CONT. TO APRIL 9, 2009

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

February 24, 2009

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico  
Oil Conservation Commission, MARK E. FESMIRE, Chairman, on  
Tuesday, February 24, 2009, at the New Mexico Energy, Minerals  
and Natural Resources Department, 1220 South St. Francis Drive,  
Room 102, Santa Fe, New Mexico.

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## A P P E A R A N C E S

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1 CHAIRMAN FESMIRE: Okay. At this time, we will go on  
2 the record with the regularly scheduled New Mexico Oil  
3 Conservation Commission meeting for February 24, 2009.

4 Let the record reflect that Commissioner Bailey,  
5 Commissioner Olson, and Commissioner Fesmire are all present.  
6 We, therefore, have a quorum. And the first item on the agenda  
7 this morning is the adoption of the minutes of the  
8 January 15, 2009 Commission meeting. These minutes have been  
9 presented by the Commission secretary.

10 Have the members had a chance to review those  
11 minutes?

12 COMMISSIONER BAILEY: Yes, I have, and I move to  
13 adopt them.

14 CHAIRMAN FESMIRE: Is there a second?

15 COMMISSIONER OLSON: I'll second that. I've read  
16 them, and I think they accurately reflect our actions at the  
17 meeting.

18 CHAIRMAN FESMIRE: Let the record reflect that the  
19 Commissioners have reviewed and adopted the minutes. All those  
20 in favor signify by saying, "Aye."

21 COMMISSIONER BAILEY: Aye.

22 COMMISSIONER OLSON: Aye.

23 CHAIRMAN FESMIRE: Aye. Now, let the record reflect  
24 that the Commissioners have reviewed and adopted the minutes.  
25 They will be signed by the Chairman and conveyed to the

1 secretary for recording.

2 The next matter before the Commission is the adoption  
3 of the annual open meetings resolution. The meetings  
4 resolution has been prepared by the secretary of the Commission  
5 and circulated to the Commissioners for review. Have the  
6 Commissioners had a chance to review this document?

7 COMMISSIONER BAILEY: Yes, I have, and it's my  
8 understanding that it is exactly the same as last year's.

9 CHAIRMAN FESMIRE: With the exception of the dates.

10 COMMISSIONER BAILEY: With the exception of the  
11 dates. So I move that we adopt them.

12 CHAIRMAN FESMIRE: Is there a second to that?

13 COMMISSIONER OLSON: I second.

14 CHAIRMAN FESMIRE: All those in favor signify by  
15 saying, "Aye."

16 COMMISSIONER BAILEY: Aye.

17 COMMISSIONER OLSON: Aye.

18 CHAIRMAN FESMIRE: The record should reflect that the  
19 open meetings resolution has been adopted by the Commission,  
20 will be signed by all Commissioners, and conveyed to the  
21 secretary.

22 There are two major cases on the Commission docket  
23 this morning. The is the deliberation in Case 14255 concerning  
24 Santa Fe County and Galisteo Basin special rules. And the  
25 other one is the -- there's a case with Xeric.

1 Counsel, do you remember the case number on that one?

2 MS. ALTOMARE: 14106, De Novo Application of Xeric  
3 Oil and Gas.

4 MR. FESMIRE: 14106. Those are the two that are  
5 going to take the most time today. We also have an executive  
6 session scheduled to receive an update and discuss the appeal  
7 of the Bass Energy Production Company. At this time, I'd like  
8 to take just a few minutes and discuss scheduling.

9 I have got to be over at the Roundhouse some time  
10 after 1:30 this afternoon, so we may have to end. Do the other  
11 Commissioners have any scheduling conflicts today or tomorrow?

12 COMMISSIONER BAILEY: No.

13 COMMISSIONER OLSON: This evening. I've got to get  
14 out of here by 6:00.

15 CHAIRMAN FESMIRE: Given those constraints, counsel  
16 in the Xeric case -- I understand that counsel for the OCD has  
17 a scheduling conflict she has to address.

18 MS. ALTOMARE: Yes. Tomorrow morning I'm not going  
19 to be available probably until about 11:00 in the morning. I'm  
20 not going to be able to change that, and I think I had  
21 addressed that with the Chairman and with opposing counsel a  
22 couple of weeks ago.

23 CHAIRMAN FESMIRE: Okay. So given those constraints,  
24 Counsel.

25 MS. MUNDS-DRY: Mr. Chairman, Commissioner Bailey,

1 Commissioner Olson, it's at your pleasure. You can see my  
2 clients are here, and we're ready to proceed today.  
3 Unfortunately, tomorrow afternoon they do have some scheduling  
4 conflicts that need to take them back to their respective  
5 states.

6 I did talk to Ms. Altomare yesterday afternoon about  
7 how we should proceed. And we'll proceed at your pleasure, but  
8 we may need to ask for an continuance until another docket if  
9 it looks like your deliberations -- which I don't mean to rush  
10 or put a limit on -- but if it looks like they're going to take  
11 the majority of the day and then if you're going to need to be  
12 gone. However you think we should proceed.

13 CHAIRMAN FESMIRE: I think what we're going to do is  
14 go ahead and do the Xeric case first and take it this morning.  
15 And after that, we'll figure out where we are time-wise and  
16 proceed like that.

17 So at this time, we will go ahead and call Case  
18 No. 14106, the De Novo Application of the New Mexico Oil  
19 Conservation Division for a Compliance Order Against Xeric Oil  
20 and Gas Corporation.

21 Counsel, would you make your announcements, please.

22 MS. ALTOMARE: Mikal Altomare on behalf of the Oil  
23 Conservation Division. I have one witness here in person and  
24 one witness by affidavit.

25 MS. MUNDS-DRY: Good morning, Commissioners. Ocean

1 Munds-Dry with the law firm of Holland & Hart here representing  
2 Xeric Oil and Gas Corporation this morning, and I have three  
3 witnesses.

4 CHAIRMAN FESMIRE: Okay. Before we proceed,  
5 Ms. Munds-Dry, I understand that you have a preliminary motion  
6 in this cause.

7 MS. MUNDS-DRY: Yes. Excuse me for a second. I'll  
8 get comfortable here.

9 We filed a motion yesterday afternoon to exclude in  
10 whole or in part the testimony of Mr. Sanchez, who the Division  
11 has indicated that they intend to call today.

12 MS. ALTOMARE: Before we proceed with actual argument  
13 on that, I would like to make a clarification for the record.  
14 I was not served by hand-delivery as indicated on that motion  
15 yesterday afternoon. I received this first thing this morning  
16 and have not had an opportunity to respond in substance in any  
17 way, shape, or form.

18 And so I just wanted to make a record of that.

19 CHAIRMAN FESMIRE: Ms. Munds-Dry?

20 MS. MUNDS-DRY: I apologize for that. We did bring  
21 the motion over yesterday afternoon. And it was, as I  
22 understood, hand-delivered, but I don't know what happened  
23 after it came here.

24 MS. ALTOMARE: Apparently, the runner came. I was  
25 not in my office at the time, although my light was on. I was



1 here until almost 6:00. The runner, then, instructed the  
2 receptionist to give it to me, which I don't think they have  
3 the authority to do.

4 Ms. Munds-Dry is well aware that I do almost  
5 everything electronically, and nothing was followed up with at  
6 that time, electronically or otherwise. I was not aware that  
7 any motion was pending until this morning.

8 MS. MUNDS-DRY: I do apologize for that. I don't  
9 know what happened with the runner. So we'll have to address  
10 that with our office.

11 CHAIRMAN FESMIRE: Ms. Munds-Dry, is that all you  
12 have to say in support of the motion?

13 MS. MUNDS-DRY: No, sir. Just a few brief points. I  
14 won't belabor it in any way. Our challenge is that with  
15 Mr. Sanchez's testimony, what we will understand he will  
16 testify about, he has no personal knowledge of any of the  
17 contacts, phone calls, or meetings that took place between  
18 Xeric and the Division.

19 Our challenge with that is not that we disagree  
20 necessarily with what he is going to testify about, but it's  
21 the witness that's being called. Instead of calling district  
22 staff who had the direct communication, or even, unfortunately,  
23 having counsel being put in the place as a witness, she is  
24 instead -- and district staff has instead -- is having to  
25 report what took place during those meetings. And then

1 Mr. Sanchez, in turn, is reporting as to what took place there  
2 according to counsel from her notes and from what she's  
3 reported. That is, in fact, hearsay.

4 And I realize that you do have discretion to follow  
5 the rules of evidence or how you choose to follow them, but  
6 that is our concern today. Instead of being able to cross  
7 Ms. Altomare or district staff, we are having to be put in a  
8 position to cross Mr. Sanchez, which he was never directly  
9 involved in any of those conversations.

10 CHAIRMAN FESMIRE: Ms. Altomare, I realize that  
11 you've had very little time to prepare a response, but do you  
12 have one?

13 MS. ALTOMARE: I do. First of all, just a  
14 preliminary matter, I would object to the motion in its  
15 entirety because of the lateness of its filing. I think it's  
16 inappropriate to be filing at such a late time.

17 Substantively, the rules of evidence, just by virtue  
18 of the fact of the way that administrative proceedings proceed  
19 and the way that regulatory agencies operate, do not apply in  
20 full force, in large part, I think, because of the way that our  
21 regulatory agency is structured.

22 But Mr. Sanchez is an example of that. He is the  
23 enforcement compliance manager. He manages and oversees the  
24 enforcement and compliance program. He has the knowledge, the  
25 collective knowledge of many of the different districts as they

1 report on the different inspections and violations that come  
2 his way. He is here as a representative of the OCD and of the  
3 enforcement and compliance program and is speaking on behalf of  
4 the Division and on behalf of the districts and the individuals  
5 over which he supervises at the time that he is providing this  
6 testimony.

7 In addition, he was here at the time of the last  
8 hearing. There was significant testimony provided at that time  
9 by both of the Xeric principals. A great deal of statements by  
10 a party opponent, if you will, that are exceptions to the  
11 hearsay rule were made at that time regarding all of the  
12 specific meetings about which Ms. Munds-Dry is speaking. And I  
13 think he's perfectly able to testify regarding those  
14 interactions as well.

15 There were meetings that took place involving myself,  
16 other individuals that were directly involved in inspections  
17 and interactions with the Xeric principals and their employees  
18 as the investigations and the efforts of the OCD went forward  
19 in attempts to try and regain compliance from this operator.  
20 Mr. Sanchez is the person that heads up those efforts and is  
21 the most appropriate person at this time to testify as to  
22 collectively those efforts.

23 So, given the fact that the rules of evidence don't  
24 apply in full force and the discretion of the Commission to  
25 allow such testimony and the value of his testimony, we would

1 ask that this motion be denied.

2 CHAIRMAN FESMIRE: Okay. Ms. Munds-Dry, given the  
3 circumstances of the motion and the fact that, you know, we do  
4 have relaxed rules here, I'm going to go ahead and overrule the  
5 objection without prejudice with your right to raise the  
6 hearsay objection at a future time. Okay?

7 MS. MUNDS-DRY: Sure. Thank you.

8 CHAIRMAN FESMIRE: With that, Ms. Altomare, would you  
9 have your witnesses be sworn, please.

10 MS. ALTOMARE: Yes. Again, the very first exhibit is  
11 from one of our witnesses, which is the affidavit of Dorothy  
12 Phillips who is testifying exclusively by affidavit. The other  
13 witness is Daniel Sanchez. He is the one that needs to be  
14 sworn.

15 DANIEL SANCHEZ

16 after having been first duly sworn under oath,

17 was questioned and testified as follows:

18 CHAIRMAN FESMIRE: Ms. Altomare, do you have an  
19 opening statement?

20 MS. ALTOMARE: Yes. Just give me one minute to get  
21 my -- I didn't expect to be going right away. I do have one  
22 clarification to make on the exhibit list. I realized that I  
23 swapped Exhibit No. 7 and Exhibit No. 10. They both are dated  
24 September 3rd, but they are -- they should be reversed.

25 CHAIRMAN FESMIRE: Exhibit what?

1 MS. ALTOMARE: Exhibit 7 and Exhibit 10, the two  
2 September 3rd OCD online lists. One is the financial assurance  
3 compliance list and one is the inactive well list. And I  
4 accidentally swapped those two.

5 CHAIRMAN FESMIRE: Okay. Ms. Altomare, how do you  
6 want to handle that? Do you want to leave them numbered the  
7 way they are and just refer to them as the number?

8 MS. ALTOMARE: They are actually labeled correctly in  
9 the packet. They are just labeled incorrectly on the sheet,  
10 the cover sheet.

11 CHAIRMAN FESMIRE: Okay. Will you call the  
12 Commission's attention to that fact when it becomes pertinent?

13 MS. ALTOMARE: Yes. I apologize. I've been thrown  
14 for a loop this morning, so give me one second to locate --

15 CHAIRMAN FESMIRE: Take your time. We have  
16 nothing -- we have other things to do, but nothing better.

17 Would you like to take a short recess?

18 MS. ALTOMARE: I think I might need to. I apologize.

19 CHAIRMAN FESMIRE: Why don't we take a five-minute  
20 recess.

21 MS. ALTOMARE: I'm really sorry.

22 CHAIRMAN FESMIRE: No problem.

23 [Discussion off the record.]

24 CHAIRMAN FESMIRE: At this time, we will go back on  
25 the record in Case No. 14106.

1 Ms. Altomare, I believe that you were about to begin  
2 the examination of your first witness, Mr. Sanchez?

3 MS. ALTOMARE: I think I was going to do a brief  
4 opening, if I'm still permitted to do so after my little jog.

5 CHAIRMAN FESMIRE: You may.

6 MS. ALTOMARE: I'll try and keep it relatively brief.

7 Essentially, this has been an ongoing ordeal with  
8 this particular operator through its many incarnations for over  
9 a decade. This operator has been a problem operator in  
10 New Mexico.

11 The particular district in which it operates has been  
12 persistently trying to get compliance from this operator. The  
13 wells are routinely imposing environmental hazards, routinely  
14 being out of compliance, being shut-in, being inactive. The  
15 signs are often out of compliance.

16 Many new operators -- new people have come in and  
17 taken over the operatorship. It seems like with each new  
18 incarnation of Xeric there's renewed hope, and yet the problems  
19 seem to persist in exactly the same fashion.

20 Such is the case in this situation. Almost -- -- --  
21 exactly a year ago, the current operatorship changed hands;  
22 quite ironically, the exact same date we filed the application  
23 in this matter. We have been making great efforts to try and  
24 work with this operator. However, at the time that we filed  
25 this application, there were a total of 88 wells that were out

1 of compliance, either with what was formally known as Rule 201,  
2 meaning that the wells were inactive a total of one year plus  
3 90 days, or that there were additional bonding owed on the  
4 wells or both.

5 In a lot of cases since that time I think the net  
6 effect of the efforts of the operator is that a total of seven  
7 wells are now in compliance. So I think they now have a total  
8 of 81 wells out of compliance, which for a year's work is not  
9 all that great. Some of the sites are -- have just been left  
10 to fester. There are some environmental issues that are not  
11 necessarily addressed by this complaint but are of a concern.

12 This operator has a habit of making promises and not  
13 following through. And at this point in time, we simply just  
14 want an order requiring them to plug their wells and be done  
15 with it already. Because we're tired of giving them new cracks  
16 at coming into compliance.

17 So at this point in time, we are asking for an order  
18 asking -- requiring them to plug all of the wells specified in  
19 the order, requiring in the interim they post all of the bonds  
20 that are due on those wells until each of those sites is  
21 plugged and released. And that they be required to pay a  
22 penalty assessment in twice the amount which was originally  
23 ordered in the underlying hearing, simply because of the amount  
24 of efforts that have gone into this. This has dragged on for  
25 years, essentially, and it's just in the last year the amount

1 of effort that has gone into this case is excessive.

2 We are also asking in this case that they be required  
3 to come back to the next Commission hearing in April with a  
4 status report for the Commission, reporting to the Commission  
5 what they are doing to come into compliance, and that they  
6 again be required to return back at the next Commission hearing  
7 after the last deadline set by the Commission to give a full  
8 report as to the completed compliance with the Commission's  
9 order.

10 I think that once you hear all the testimony and the  
11 evidence, it will become clear as to why the OCD has gotten to  
12 the point where they are asking for this kind of relief.

13 And at this time, I will call the witness, Daniel  
14 Sanchez.

15 CHAIRMAN FESMIRE: Okay. Ms. Munds-Dry, would you  
16 like to make an opening, or would you like to reserve it?

17 MS. MUNDS-DRY: May I reserve it for my case?

18 CHAIRMAN FESMIRE: You may, ma'am.

19 Ms. Altomare, why don't you go ahead and begin your  
20 examination of Mr. Sanchez.

21 DIRECT EXAMINATION

22 BY MS. ALTOMARE:

23 Q. Can you state your full name for the record,  
24 please.

25 A. Daniel Sanchez.



- 1 Q. And by whom are you employed, Mr. Sanchez?
- 2 A. The Oil Conservation Division.
- 3 Q. And what is your full title with the Division?
- 4 A. Compliance and enforcement manager.
- 5 Q. How long have you held that position?
- 6 A. For over four years now.
- 7 Q. Okay. And in that position you oversee, train,
- 8 and supervise all of the different field offices with the
- 9 enforcement and compliance program?
- 10 A. Yes, I do.
- 11 Q. Are you familiar with the requirements of what
- 12 was previously designated Rule 201 but has been now
- 13 redesignated as 19.15.5.9?
- 14 A. Yes, I am.
- 15 Q. And what does that require of operators?
- 16 A. Operators are required after a well has been
- 17 inactive for over 15 months to either restore that well to
- 18 production or injection, to properly plug and abandoned it, or
- 19 get an approved temporary abandonment status.
- 20 Q. And are you familiar with requirements of what
- 21 was previously designated as Rule 101(B) and has now been
- 22 redesignated 19.15.8.9.C?
- 23 A. Yes, I am.
- 24 Q. And what does that require of operators?
- 25 A. That any state or fee well that has been inactive

1 for more than two years requires additional bonding, single  
2 well financial assurance.

3 Q. And are you familiar with the requirements of the  
4 previously designated Rule 1115 now referred to as 19.5.7.24?

5 A. Yes, I am.

6 Q. And what does that require of operators?

7 A. Operators must report production on a monthly  
8 basis for all completed wells.

9 Q. And before we get into the specifics of the  
10 application filed by the Oil Conservation Division in March of  
11 2008, generally, since you've been with the Oil Conservation  
12 Division, what has been your experience or general impression  
13 regarding the operator known as Xeric Oil and Gas?

14 A. Through visits to the Hobbs District Office,  
15 going out to the field and seeing some of the sites myself,  
16 they've been willing to make promises, to clean up wells, get  
17 them plugged properly, do specific work that was required from  
18 the district office. Yet, we have still not seen any of those  
19 promises really take place.

20 Q. Okay. And what is your impression regarding  
21 their history of repeated violations?

22 A. They failed to meet any of the requirements set  
23 out by the Oil Conservation Division up to this date.

24 Q. Okay. And at the time the application was filed  
25 on March 5th of 2008, what was the status of Xeric Oil and Gas

1 at that point in time?

2 A. Out of 110 wells, they had 88 of those wells  
3 either inactive or in violation of the financial assurance  
4 requirements.

5 Q. Okay. And at that point, we didn't realize it,  
6 but they were actually -- it was actually the same day that  
7 Mr. Hirshfield, St. John, and Collier were becoming officially  
8 involved with Xeric Oil and Gas; is that right?

9 A. Yes.

10 Q. How many of Xeric's oil and gas wells were  
11 showing as inactive and therefore in violation of Rule 201 at  
12 the time the application was filed?

13 A. 80 wells.

14 Q. So 80 out of 110. Okay. And again, at that  
15 point, we were basing this on production reported by the  
16 operator, so either Rule 201 or 1115 they would have been in  
17 violation of?

18 A. That's correct.

19 Q. And these are the 80 wells that are specifically  
20 identified at Section 4, paragraph 20 of the OCD's application?

21 A. Yes.

22 Q. And how many of Xeric's wells were in violation  
23 of the financial assurance requirement at the time the  
24 application was filed?

25 A. 69 of the 110.

1 Q. And these are the 69 wells specifically  
2 identified at Section 2, paragraph 11 of the OCD's application?

3 A. Yes.

4 Q. Okay. And once the application was filed, the  
5 hearing was scheduled for April 17th, 2008?

6 A. That's correct.

7 Q. What, if any, response from Xeric was received  
8 following the filing of the application?

9 A. The only response was two days prior to that  
10 hearing where Xeric called and asked to discuss the case with  
11 OCD.

12 Q. And you weren't personally involved in this  
13 telephone call; is that right?

14 A. That is right.

15 Q. But you are -- explain for the Commission how you  
16 are aware of the content of that telephone conference.

17 A. Being in charge of the various district offices,  
18 I do get regular reports from my district supervisors and  
19 staff. I visit the offices on a regular basis, so they keep me  
20 up to date on issues that are coming up, especially when it  
21 concerns an upcoming hearing.

22 Q. Okay. But that telephone call for August 15th  
23 was actually directed to Santa Fe; isn't that correct?

24 A. That's correct.

25 Q. Okay. And the telephone call that took place on

1 August 15th was between whom?

2 A. It was Joe Cook, who was the owner at the time or  
3 previous to the March 15th transfer. And I believe it was --  
4 Mr. Collier was involved in that phone call as well.

5 Q. And what is your understanding of what was  
6 discussed at the telephone conference?

7 MS. MUNDS-DRY: Mr. Chairman, I'm going to renew my  
8 objection at this time. Now we're getting into hearsay  
9 territory.

10 CHAIRMAN FESMIRE: Okay. Ms. Munds-Dry, I'm going to  
11 go ahead and overrule that objection because this is within the  
12 scope of Mr. Sanchez's employment. And I realize that is not a  
13 traditional hearsay exception, but then our rules -- I think it  
14 has become sort of an exception here.

15 If you want to either object when you think it's  
16 pertinent or just leave a running objection, we'll allow that.  
17 You can do either one.

18 MS. MUNDS-DRY: If I just leave a running objection  
19 to save us all some time, I will do it. Thank you.

20 Q. (By Ms. Altomare): So again, Mr. Sanchez, what  
21 is your understanding of what was discussed at the telephone  
22 conference on April 15th?

23 A. The OCD reiterated its concerns about the various  
24 violations of rules, the inactive wells, the lack of financial  
25 assurance. Also, Mr. Collier confirmed that he was aware of

1 the inactive well bonds issue and planned to work with both the  
2 financial assurance administrator and the district offices to  
3 do the required bonds, get those required bonds posted.

4 Mr. Collier also agreed if the hearing were to be  
5 continued that he would come and meet in person with OCD and  
6 put together a plan to start coming into compliance.

7 Q. Okay. And is it your understanding that the  
8 April 17th hearing was continued as requested by Mr. Collier?

9 A. Yes.

10 Q. And did Xeric follow through as promised and come  
11 in to meet with the OCD prior to that next hearing setting that  
12 was scheduled in May?

13 A. No, they did not.

14 Q. Okay. Was a meeting ultimately scheduled,  
15 though?

16 A. Yes. We finally confirmed a meeting for  
17 June 13th, I believe it was.

18 Q. Okay. And do you recall testimony from the last  
19 hearing by one of the Xeric principals reflecting that  
20 Mr. Collier was representing Xeric at the time that he attended  
21 that April 15th telephone conference?

22 A. Yes.

23 Q. Were you able to attend the June 13th hearing,  
24 June 13th meeting with the Xeric individuals when they came in?

25 A. Yes.

1 Q. The one that --

2 A. Oh, for that one, no. I was out of town again.

3 Q. Okay. But that was conducted in person at the  
4 OCD offices in Santa Fe, right?

5 A. In Santa Fe, yes.

6 Q. What was your understanding of what was discussed  
7 at the June meeting with Xeric and OCD?

8 A. Xeric assured the OCD that it intended to come  
9 into compliance as soon as possible. They discussed putting a  
10 plan together assessing the wells and determining a  
11 prioritization of those wells to get them back into compliance.

12 And they agreed to prepare a general plan of action  
13 and corresponding anticipated timeline for the OCD to review.  
14 And that would be done before the next hearing, which was  
15 scheduled for July, July 10th.

16 Q. Okay. And, again, that hearing was attended by  
17 Mr. Collier as well as Mr. Hirshfield and Mr. St. John?

18 A. Yes.

19 Q. Okay. What concerns did the OCD express at that  
20 hearing?

21 A. They reiterated their concerns about the high  
22 level of wells that were out of compliance, either inactive or  
23 with the financial assurances. They advised Xeric that  
24 Mr. Larry Hill, the district supervisor, should be contacted,  
25 that he had a great deal of information that would probably be

1 helpful to Xeric with the new ownership that would help them  
2 start, you know, get the prioritization in place to start  
3 working on those wells.

4 Q. And just so there's not a whole lot of confusion,  
5 the operators actually know Larry Hill as Buddy Hill, right?

6 A. Yes. Larry's nickname is Buddy.

7 Q. Just to be clear. And what was one of the things  
8 that OCD emphasized at that hearing -- I mean, at that meeting?  
9 I'm sorry.

10 A. Basically, communication, which we pretty much  
11 emphasize with all operators. Some of our biggest reasons that  
12 we actually have to get this far into a situation is because  
13 the operator failed to contact either the district office or  
14 Santa Fe.

15 With good communication, most of these problems go  
16 away before they ever get this far. And we just stress the  
17 importance of that to keep in touch with the district office  
18 and with Santa Fe.

19 Q. Okay. And to your knowledge, did Xeric submit  
20 the promised plan and timeline for OCD review prior to that  
21 July hearing date?

22 A. No, they didn't.

23 Q. Okay. What, if any, contact was made in July by  
24 Xeric or their counsel?

25 A. Counsel contacted OCD counsel to let them know



1 that it would be forthcoming.

2 Q. To let OCD know?

3 A. Yes.

4 Q. And what was the reason that was given?

5 A. They were still working with the district office,  
6 and Buddy Hill was trying to put together that report.

7 Q. So as of July the 1st?

8 A. That was July 1st, yes. As of July 30th, there  
9 was still nothing received from Xeric. E-mails were sent to  
10 Xeric's counsel seeing when that list was going to come in.

11 And on August 15th, 2008, Xeric finally submitted  
12 that status update.

13 Q. Okay. At this time, I'd like you to turn to  
14 Exhibit 11 in your packet.

15 A. Okay.

16 Q. And is this the August 15th report that was  
17 received from Xeric?

18 A. Yes. It was dated August 14th and was received  
19 at OCD on the 15th, yes.

20 Q. Was the update plan received on August 15th  
21 sufficient? Did it meet with the exceptions of OCD based on  
22 the prior discussions with Xeric?

23 A. No, it did not.

24 Q. And why not?

25 A. It covered some wells, but some of those wells

1 weren't part of the original list of wells that the OCD had  
2 concerns about. And it didn't say anything about the complete  
3 list that was given to them.

4 Q. Okay.

5 A. So it just was insufficient in terms of letting  
6 us know how they were going to deal with all of the issues that  
7 we had with them.

8 Q. Okay. And did the status update and plan of  
9 action provide any sort of a time frame either for tasks that  
10 had already been completed or for those that it anticipated to  
11 complete, that Xeric anticipated completing?

12 A. It had some tasks that were complete and that  
13 were to be completed, but it was very minimal.

14 Q. Okay. Were any dates or any sort of  
15 prioritization or time frame provided within the body of that  
16 update plan?

17 A. No.

18 Q. Was any documentations or information produced  
19 along with the update for the purpose of rebutting the  
20 presumption of inactivity for either of the previously  
21 designated Rules 101 or 201 that are at issue in this  
22 particular case?

23 A. No. Just the paper that was submitted. That's  
24 all that was submitted, nothing else.

25 Q. I'd like you to, at this point, turn to

1 Exhibit No. 4 in your packet, which I believe is a letter dated  
2 August 15th.

3 A. Okay.

4 Q. And can you describe the purpose for this letter?

5 A. Okay. This was actually August 21st.

6 Q. I'm sorry. August 21st, rather, addressing the  
7 report of August 15th.

8 A. Yes. And it was sent out regarding the  
9 shortcomings of the status report, basically. It outlined and  
10 summarized interactions between the OCD and Xeric leading up to  
11 the submission of the status update.

12 It identified what OCD viewed to be deficiencies in  
13 the status update and invited Xeric to submit additional  
14 information or data prior to the scheduled hearing of  
15 September 4th.

16 Q. And to your knowledge, was any additional data or  
17 information received from Xeric in response to this letter  
18 prior to the scheduled hearing of September 4th?

19 A. No.

20 Q. So the hearing did proceed on September 4, 2008;  
21 is that right?

22 A. Yes.

23 Q. I'd like you at this time to turn to Exhibit 7  
24 and Exhibit 10. And, again, these exhibits should be properly  
25 identified in your packet, although they are not properly

1 identified on your cover sheet to your packet.

2 If you could identify these documents for the record,  
3 Mr. Sanchez?

4 A. Okay. Exhibit No. 7 is going to be the inactive  
5 well additional financial assurance report which was generated  
6 from OCD Online.

7 Q. And these numbers are generated in the regular  
8 course of OCD business?

9 A. Yes.

10 Q. And the figures are calculated based on the data  
11 that is submitted by the operator; is that right?

12 A. That's right.

13 Q. And it is public access, public record?

14 A. Yes, it is.

15 Q. And Exhibit 10 is what?

16 A. Exhibit No. 10 is the inactive well list for  
17 Xeric, and this is showing that they have 110 wells, and there  
18 were 82 inactive as June 1, 2007. And this report was pulled  
19 on September 3rd of 2008, prior to that hearing.

20 Q. Okay. And, again, the same question: These are  
21 public documents based on data submitted by the operators?

22 A. Yes, they are.

23 Q. And they are maintained in the regular course of  
24 OCD business?

25 A. Yes, they were.

1 Q. And so those two documents reflect the status of  
2 Xeric Oil and Gas at the time of the hearing on  
3 September 4th, 2008?

4 A. Yes.

5 Q. Moving on, if I could direct your attention to  
6 Exhibit No. 2.

7 A. Okay.

8 Q. Do you recognize this document or this packet of  
9 documents?

10 A. Yeah. These are sundry forms, Form C-103s, that  
11 were submitted by Xeric.

12 Q. Okay. And these were actually labeled Exhibit C  
13 in the previous hearing and submitted as an exhibit by Xeric;  
14 is that right?

15 A. That's correct.

16 Q. Okay. And these are not actually filed sundries;  
17 is that right?

18 A. That's right.

19 Q. Okay.

20 CHAIRMAN FESMIRE: Ms. Altomare, could you explain  
21 that these are not actually filed sundries? These are sundries  
22 that Xeric prepared but didn't file?

23 MS. ALTOMARE: Yeah. That's what I was --

24 CHAIRMAN FESMIRE: That's your next question?

25 MS. ALTOMARE: Yeah.

1 CHAIRMAN FESMIRE: Excuse me. Let's straighten that  
2 out.

3 Q. (By Ms. Altomare): Can you summarize the  
4 importance of this packet of sundries, please?

5 A. These were sundries that were meant as notice of  
6 intent to perform remedial work on these wells. They were put  
7 together and provided to the OCD, but they were never actually,  
8 I guess, put into the system.

9 Q. Okay. And do you recall testimony provided by  
10 Mr. Hirshfield at the Division hearing stating that Xeric  
11 intended to file these sundries either the date of the hearing  
12 or the end of that week on September 4th, 2008?

13 A. Yes.

14 Q. And to your knowledge, did Xeric ever file any of  
15 these sundries that they had prepared and submitted as an  
16 exhibit?

17 A. No, they didn't.

18 Q. And there are sundries for ten different wells;  
19 is that right?

20 A. That's correct.

21 Q. And all of these wells are for either the Crosby  
22 Deep or the Gregory leases operated by Xeric Oil and Gas?

23 A. Yes.

24 Q. For three of the ten wells, however, they did  
25 file federal sundries that were similar in nature; is that

1 right?

2 A. Yes, they did.

3 Q. Okay. Let me go ahead and direct your attention  
4 at this time to Exhibit 6.

5 A. Okay.

6 Q. What does this packet of materials represent?

7 A. Exhibit 6 is a list of well inspection histories  
8 for, I believe, there's 10 wells, those ten wells that were on  
9 those sundries, the C-103s. They also include pictures of the  
10 well sites.

11 Q. Okay. So this is recent current statuses for  
12 these ten wells?

13 A. Yeah. These inspections were taken on  
14 February 6th a couple of weeks ago.

15 Q. Okay. And who was the inspector with the OCD who  
16 conducted these inspections?

17 A. Mark Whitaker out of the Hobbs District Office.

18 Q. And have you had an opportunity to discuss these  
19 inspections with Mr. Whitaker?

20 A. Yes, I did.

21 Q. And was he one of the inspectors working under  
22 your supervision as a compliance and enforcement manager with  
23 the OCD?

24 A. Yes, he is.

25 Q. And were these inspections, reports, and

1 photographs documenting these inspections completed and taken  
2 in the course of Mark's regular duties as a field inspector  
3 with the Hobbs District Office?

4 A. Yes, they were.

5 Q. Are these records kept in the regular course of  
6 OCD business?

7 A. Yes, they are.

8 Q. Do the reports and photographs reflect Mark's  
9 observations on February 6th, 2009, regarding these ten wells?

10 A. Yes, they do.

11 Q. I'd like to, at this time, go ahead and work  
12 through these ten wells beginning with -- I think I tabbed them  
13 all for -- I think this is for Counsel as well -- beginning  
14 with 6-A.

15 A. Okay.

16 Q. It should be the Crosby Deep No. 1.

17 A. Okay. This well, the inspection report claims  
18 the well is not plugged, there's no record of a pressure test,  
19 and that he took pictures. And then the pictures, the first  
20 one, of course, is showing the well sign, Xeric Oil and Gas  
21 Corporation.

22 The next picture is a picture of the wellhead.  
23 There's a picture of the site, additional equipment on site,  
24 and just an overall picture of the site after that.

25 Q. Okay. This -- going back to the very first of



1 the page for the well inspection history, this well had been  
2 shut-in since 2000; is that right?

3 A. Yes.

4 Q. And, actually, in 2005, a notice of intent to  
5 plug and abandon was approved by the Feds in 2005?

6 A. That's correct.

7 Q. So this well has been inactive for some time; is  
8 that right?

9 A. Yes.

10 Q. And at this point in time, it does appear that  
11 there's no activity going on?

12 A. No activity. The next one is another Crosby Deep  
13 well and the same date, February 6, 2009, for the inspection.  
14 That shows that the well was idle.

15 "No flow lines connected to the wellhead. Oil  
16 seeping from wellhead. Rods stacked out in tubing. The sub  
17 cable also sticking out of wellhead. Location has been scraped  
18 and leveled. Piping and other junk metal north of well. Large  
19 excavation on the east side of location. Oil-stained soil on  
20 NW corner of location."

21 And he took pictures.

22 Q. So, in addition on this case, in addition to the  
23 inactivity, there were actually some environmental issues going  
24 on at this site?

25 A. Yes.

1 Q. So there's debris and stained soil and some  
2 leaking going on?

3 A. Yes.

4 Q. And it looks like, looking at the well inspection  
5 history, that the leaking was noted, and the debris was noted  
6 quite some time back; is that right?

7 A. Back in April of 2006. The last inspection prior  
8 to this one, it shows, "Oil leaking out wellhead. Needs leak  
9 stopped and well T/A, P/A, or put back in use."

10 Q. And the fact that a violation was noted back in  
11 2005 indicates that the operator would have been notified of  
12 that?

13 A. Yes.

14 Q. And the violation has persisted, it appears.

15 A. Yes. And once again, there's pictures attached  
16 showing the leak and the staining and the junk on site as well  
17 as the overall site. And there looks to be some sort of  
18 excavation. For what purpose, we don't know though.

19 And the next well?

20 Q. 6-C is the Crosby Deep #3.

21 A. And the report states, "Well is idle. No  
22 flowlines connected to the wellhead. No record of recent  
23 pressure test. Location has been scraped and leveled."

24 And, well, the previous inspection shows the well  
25 sign was okay. And it also shows that it needs some corrective

1 work, I guess. It -- "Needs well corrected. Will check T/A  
2 status. First notice."

3 That was back in 2005.

4 Q. But the well had been shut-in at least since  
5 August of 2007, according to the inspection history?

6 A. Yes. And again, this one, the well sign doesn't  
7 show it as a Xeric well. It shows it as an XOG Operating well.  
8 So that would be another violation. And the other picture, of  
9 course, is just of the wellhead and the general location.

10 Q. Okay. So the next well is 6-D, Crosby Deep #4.

11 A. The well is idle. "Sub pump cable sticking out  
12 of wellhead. All valves closed running toward separator.  
13 Surplus equipment and other debris south of the location.  
14 Pumping unit base on the west side. Sub pump controller on NW  
15 corner. Location has been leveled and scraped off."

16 Q. Okay.

17 A. And going back to 2005, everything looked like it  
18 was okay. And then the pictures, again, just show the area and  
19 general location of the well and the well site.

20 Q. Okay. Moving on to 6-E, would be the Gregory --  
21 do I have the right one? Do I have the right one?

22 A. Yeah. It's the Gregory A.

23 Q. The Gregory A?

24 A. This one shows an idle well. "No flowlines  
25 corrected to wellhead. Netting on the tank west of the well

1 has fallen into the tank. Location scraped and leveled."

2 Prior to that, it looked like it was in good shape  
3 back in '07. Again, then, the well signs, the wellhead  
4 pictures, and the picture of the netting falling into the tank.

5 Q. Okay. And then the -- so that was the Gregory  
6 A #5?

7 A. Yes.

8 Q. So 6-F is the Gregory A; is that the #7?

9 A. I believe so.

10 Q. Yeah. Number 7.

11 A. It shows, "The well appears idle. Pumping unit  
12 on well and rods in tubing. 1" valve on off side of pumping  
13 tee open."

14 And prior to that, it looked like things were okay.  
15 Again, the well sign shows it to be cleaned up a little bit.  
16 You can barely see the Xeric name on it. And it has a picture  
17 of the pumping unit and the wellhead. It looks like there's  
18 staining around the wellhead there.

19 Q. Okay. Moving on to 6-G, the Gregory A No. 8.

20 A. This one shows, "Pumping unit on the well with  
21 rods in hole. No flowlines connected to wellhead. Location  
22 was scraped and leveled."

23 And last inspection in 2005 shows the tank battery  
24 had been removed and the site cleaned up. Again, the pictures  
25 of the site, wellhead pumping unit.

1 Q. Okay. And 6-H is the Gregory C No. 1.

2 A. On this well the, "Rods stacked out in tubing.  
3 Location has been scraped and leveled. No flowline connected  
4 to wellhead."

5 And the well was idle. Back in '05, the well was  
6 shut-in. No TA test was shown. And previous to that, it was  
7 on a TA status from 2000, February of 2000.

8 Q. So this has been an inactive well for some time?

9 A. Yes. The picture showing the wellhead and sign.

10 Q. And 6-I is the Gregory El Paso Federal No. 1?

11 A. It shows, "Well idle. No flowlines connected to  
12 well. Reda cable sticking out of wellhead. Location has been  
13 scraped and leveled. Debris from location pushed off on the  
14 north side."

15 And prior to that in '07, things looked like they  
16 were okay.

17 And once again, the well sign, pictures of the  
18 flowline, and the well site kind of needs to be picked up a  
19 little bit, it looks like. And then an overall shot of the  
20 area of the site.

21 Q. Okay. And finally 6-J is the Gregory El Paso  
22 Federal No. 4.

23 A. This one shows an idle well. "No flowline  
24 connected to the well."

25 Previous to that, it looked like everything was okay

1 and in good shape. It has a little bit longer inspection  
2 history than this other one. And once again, the Xeric Oil  
3 sign and wellhead and location and generally in good shape in  
4 terms of being a clean site.

5 Q. Okay. With regard to the Crosby Deep No. 1,  
6 which was actually Tab No. 6-A, Xeric actually had filed a  
7 federal sundry following up, even though they didn't file the  
8 one that they had submitted at the hearing with the OCD; isn't  
9 that right?

10 A. That's correct.

11 Q. And what, if any, action was taken by the BLM  
12 with regard to that federal sundry?

13 A. They were granted an extension to February 1st of  
14 '09.

15 Q. To do what?

16 A. To plug the well or get it back on production.

17 Q. And did they meet that obligation?

18 A. According to the pictures, they did not.  
19 According to the inspection of the site, not just the pictures.

20 Q. And with regard to the Crosby Deep No. 3, which  
21 was Tab No. 6-C, again, they filed a federal sundry notice of  
22 intent. What was the response of the BLM with that well?

23 A. They also gave them a deadline of February 1st of  
24 2009, which they did not meet.

25 Q. Okay. And finally, the Crosby Deep No. 4, which

1 was Tab No. 6-D, they filed a federal sundry in that as well, I  
2 believe. And what was the BLM's response to that?

3 A. January 7th deadline on that one of '09, and they  
4 did not meet that deadline either.

5 Q. Okay. I'd like you at this time to turn to  
6 Exhibit No. 5.

7 A. Okay.

8 Q. Do you recognize this document?

9 A. This is the Division Order in Case 14106.

10 Q. It's Order No. R-13005; is that right?

11 A. That's correct.

12 Q. And what was Xeric ordered to do as a result?

13 A. They were given several things to do. They were  
14 given a deadline to pay a single well bonding note for the 69  
15 wells identified in that application. Any and all delinquent  
16 C-115 production reports for any of the identified wells had to  
17 be filed by December 31st of '08.

18 The deadline for the well bonding was November 28th  
19 of '08. And they ended up with a deadline of January 30th of  
20 '09. 88 identified inactive wells must be plugged or otherwise  
21 brought into compliance and \$88,000 penalty. Assessment must  
22 be paid by this date.

23 Q. And did Xeric meet any of the deadlines set by  
24 the order?

25 A. No, they did not.

1 Q. And to your knowledge, did Xeric seek and/or  
2 obtain a stay of the Division Order pending the outcome of this  
3 de novo application?

4 A. No, they did not.

5 Q. I'd like to direct your attention at this time to  
6 Exhibit No. 8 and Exhibit No. 9. Can you identify these  
7 documents for the Commission, please?

8 A. Exhibit No. 8 is the inactive well list for  
9 Xeric. And this is from February 16th, 2009, which was last  
10 week. And there are still 75 wells on that inactive well list.

11 Q. Out of 110?

12 A. Out of 110, yes. And Exhibit 9 is the inactive  
13 well additional financial assurance report printed on that same  
14 day, February 16, 2009. And this one is showing quite a number  
15 of wells that are still --

16 Q. What is the approximate amount of total bonding,  
17 additional bonding owed by Xeric at this time?

18 A. I believe it's \$667,000.

19 Q. And that number is quite a bit less than at the  
20 last hearing. Do you know why that number has dropped?

21 A. Yes. Dorothy Phillips, our bond administrator,  
22 had rechecked some of the depths on those wells and found a  
23 pretty big error on one of them. And by catching that, she was  
24 actually able to reduce the amount required by over \$100,000.

25 Q. So that was actually caught by the OCD and not by



1 the operator?

2 A. Yes.

3 Q. Has Xeric posted any single well bonds since the  
4 filing of this application?

5 A. No.

6 Q. In fact, has Xeric posted any of the single well  
7 bonds since the new rule went into effect in January of 2008?

8 A. No, they have not.

9 Q. Do you recall hearing testimony given at the  
10 previous hearing in this matter by the principals in Xeric,  
11 Mr. Hirschfeld and Mr. St. John?

12 A. Yes, I do.

13 Q. Specifically, do you recall both gentlemen  
14 testifying that they had known since at least June of 2008 that  
15 they have obligations to post single well bonds for a number of  
16 wells?

17 A. Yes, I do remember that.

18 Q. And do you recall they both testified that they  
19 both knew they had to post the bonds even if they plan to bring  
20 these wells into compliance?

21 A. Yes.

22 Q. Do you recall testimony of Mr. Hirschfeld that he  
23 did not check with the OCD or review OCD rules prior to  
24 acquiring Xeric and, therefore, did not budget for this  
25 bonding?

1 A. That's correct as well.

2 Q. And do you recall both of these gentlemen  
3 testifying that they knew at the time that they decided to  
4 acquire Xeric that Xeric had many issues to be addressed  
5 including inactive wells?

6 A. Yes, I remember that.

7 Q. And finally, do you recall them both  
8 acknowledging that Mr. Collier had made numerous commitments to  
9 the OCD that were not followed through on with the OCD?

10 A. Yes.

11 Q. I'd like to direct your attention at this time to  
12 Exhibit No. 3, which is portions of the transcript from the  
13 Division hearing --

14 A. Okay.

15 Q. -- consisting of the testimony of Mr. Hirschfeld  
16 and Mr. St. John from that hearing. Have you reviewed the  
17 excerpts from the transcript in Exhibit 3?

18 A. I've reviewed -- I've gone through them, yes.

19 Q. To your knowledge, does this fairly and  
20 accurately reflect what your recollection of that testimony  
21 was?

22 A. Yes, it does.

23 Q. And are you aware that Xeric has now submitted as  
24 part of its exhibits in this matter an additional set of C-103s  
25 similar to the previous exhibits for the last hearing

1 reflecting some basic maintenance done on 22 wells?

2 A. Yes, I am.

3 Q. And these are not the same wells that it had  
4 initially said it was going to focus its attention on, the  
5 Gregory and Crosby Deep leases?

6 A. Yes.

7 Q. Which leases are the 22 wells in this new exhibit  
8 located?

9 A. They are on West Pearl, the South Pearl, and the  
10 Mesa Queen units.

11 Q. Out of the 22 wells for which the new C-103s that  
12 we've just received are on, how many were at issue in this  
13 matter? In other words, specifically, out of the 22 wells, how  
14 many are amongst the 88 that are at issue in this case?

15 A. I believe there were seven.

16 Q. How many were actually listed though?

17 A. Oh, listed? 15.

18 Q. And how many, actually, out of that 15 were  
19 actually brought into compliance?

20 A. Seven.

21 Q. So out of 88 wells since the filing of this  
22 application, Xeric has brought seven back into compliance since  
23 last March?

24 A. Yes, that's correct.

25 Q. Okay. At this point, what is the Division

1 seeking from the Commission?

2 A. We're seeking an order from the Commission asking  
3 that these wells be plugged by a date certain, that the  
4 financial assurance being posted, the required postings, the  
5 \$667,000 -- the approximate \$667,000 be posted for the  
6 financial outstanding single well bonds. The original penalty  
7 assessment was for \$88,000. Since they didn't meet any of the  
8 deadlines of the original order, we would request that that  
9 penalty be doubled and a time frame given for that penalty to  
10 be received.

11 Q. Now, again, we're still not pursuing the \$1,000  
12 per day per violation? We're still not pursuing the maximum  
13 amount of penalty permitted under the Oil and Gas Act?

14 A. No, we are not.

15 Q. For clarification purposes.

16 A. We are requesting that the Commission order Xeric  
17 to file any and all delinquent C-115s by a date certain. We're  
18 asking that Xeric be required to appear before the Commission  
19 at the Commission meeting to be conducted in April for the  
20 purpose of a status hearing to advise the Division and the  
21 Commission of any work that has been done up to that point  
22 trying to come into compliance with the Commission's orders.

23 And we're asking that the Commission require Xeric to  
24 reappear before the Commission at the following Commission  
25 hearing in order to get another status report, basically, on

1 their efforts to come into compliance.

2 Q. Okay. Is there any additional comments that you  
3 would like to make to clarify or follow-up on any of your  
4 testimony you've given here?

5 A. Just that, you know, over a period of years, the  
6 district office and the Santa Fe office has tried to work with  
7 Xeric to bring them into compliance, and it just doesn't seem  
8 to be moving anywhere up to this time, at least up to this  
9 date.

10 The most recent version of Xeric has simply committed  
11 to the same pattern and practice of the previous owners. And  
12 we just don't see any change at this point. And we believe  
13 maybe a Commission order may change that, or we're hoping that  
14 a Commission order will change that.

15 Q. Okay.

16 MS. ALTOMARE: At this time, I would move Exhibits --  
17 OCD Exhibits 1 through 11 into evidence.

18 MS. MUNDS-DRY: No objection.

19 CHAIRMAN FESMIRE: OCD Exhibits 1 through 11 will be  
20 admitted for the record.

21 [Applicant's Exhibits 1 through 11 admitted into  
22 evidence.]

23 MS. ALTOMARE: And I will pass the witness.

24 CHAIRMAN FESMIRE: Ms. Munds-Dry?

25 MS. MUNDS-DRY: Thank you, Mr. Chairman.

## CROSS-EXAMINATION

BY MS. MUNDS-DRY:

Q. Mr. Sanchez, you said at the beginning of your testimony that your general impression that you at least understood from the district office is that Xeric has made a number of promises that they have not been able to keep.

A. That's correct.

Q. Can you discuss what specific promises they have made in the last year?

A. Well, when Xeric came in before the hearing in September, they had promised to put together a list of prioritized wells, you know, based on the list that we had given them on inactive wells and to start working on those.

They had promised to take care of the financial assurance issues and just basically to start coming into compliance with the rules and what we were requesting. They were also ordered in the hearing order to do some of those same things, including the filing of the C-115s.

Q. Okay. I understand that. But before the order, those were the promises that you recall that Xeric made or that you understand that Xeric made?

A. Yes. And when the issue first came up -- it must have been about three years ago -- with the district, I was actually taken out to some of the sites by one of the -- well, a couple of district inspectors out there, the compliance

1 officers, and they had told me about numerous contacts with  
2 Xeric at that time where they were trying to get certain areas  
3 cleaned up and wells plugged.

4 And those, most of that was probably done on an  
5 informal basis, so I really can't say that they made an  
6 official promise or anything that we have together in writing.  
7 But those kinds of issues were really on the minds of district  
8 staff, and they were hoping to be able to take care of those.

9 Q. Have you had the opportunity since that time  
10 three years ago to visit any of the Xeric sites?

11 A. Yes. I believe I was out there maybe two years  
12 ago. It might not have even been that -- a year and a half --  
13 and we went out to the same sites that we had originally gone  
14 out to, and the appearance of the sites was similar to the  
15 first visit.

16 Q. Mr. Sanchez, if we could turn to the April 15th  
17 telephone call. You mentioned that Mr. Cook and Mr. Collier  
18 were on the phone call?

19 A. Yes.

20 Q. Who from the OCD was present on the phone call?

21 A. I believe counsel staff at the time was there.  
22 And right now I don't remember if we had someone from the  
23 district office on that as well.

24 Q. Because you weren't there?

25 A. Because I wasn't there. Yes, ma'am.

1 Q. So your knowledge of what took place on that  
2 phone call was relayed to you by?

3 A. It was relayed to me by counsel.

4 Q. Is that Ms. Altomare?

5 A. Yes.

6 Q. So there may or may not have been district staff  
7 on that call?

8 A. Yes.

9 Q. And during your testimony, you said that the OCD  
10 reiterated their concerns with Xeric operations in New Mexico.  
11 Do you know who reiterated or who expressed those concerns for  
12 the OCD?

13 A. I believe it would have been staff counsel.

14 Q. At the June 13th meeting, Mr. Sanchez, who was  
15 present for the OCD?

16 A. Off the top of my head, I can't recall other than  
17 staff counsel.

18 Q. Okay. And you also indicated that Xeric had  
19 assured staff counsel that they would come into compliance with  
20 OCD rules. Do you know who made that promise?

21 A. My understanding is it was Mr. Collier.

22 Q. And, again, you stated that the concerns were  
23 related to Xeric about their compliance issues. Who expressed  
24 those concerns as far as you know?

25 A. Whoever was at that meeting at the time.



1 Q. Mr. Sanchez, if we could turn briefly to  
2 Exhibit No. 11.

3 A. Okay.

4 Q. Who is this letter directed to?

5 A. To Ms. Altomare.

6 Q. Did you review this letter at the time it came  
7 in?

8 A. Yes.

9 Q. And you stated in your testimony, Mr. Sanchez,  
10 that the letter did not meet OCD expectations.

11 A. That's correct.

12 Q. Was that the expectation of yourself?

13 A. Myself and the rest of OCD and the district staff  
14 that had been working on this.

15 Q. Okay. And do you know what guidance was given to  
16 Xeric when submitting this letter to the OCD?

17 A. My understanding was that we were looking at  
18 having all of the wells in question addressed in that, not just  
19 a few of them.

20 Q. Anything else?

21 A. I believe the concern about filling out the  
22 C-115s was addressed at that time as well, and, of course, the  
23 financial assurance.

24 Q. Let's turn to Exhibit 4, please, Mr. Sanchez.  
25 Who drafted this letter to -- it's addressed to me. Who

1 addressed the letter? Do you know who drafted this?

2 A. I believe our counsel drafted it.

3 Q. Did you assist in the drafting?

4 A. Yes. I review all letters that are going to be  
5 going out.

6 Q. Okay. You testified that since this time last  
7 year, I believe -- and correct me, Mr. Sanchez, if I'm wrong,  
8 my notes may not be accurate here -- that Xeric has brought  
9 seven wells into compliance?

10 A. Yes, seven wells.

11 Q. And do you know when those wells were brought  
12 into compliance?

13 A. They were fairly recent, but I can't tell you the  
14 exact dates.

15 Q. Okay. I think that's all the questions I have.  
16 Thank you, Mr. Sanchez.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 EXAMINATION

19 BY COMMISSIONER BAILEY:

20 Q. Following up on that June 8th meeting, what  
21 promises were made to comply with OCD rules? Do you recall if  
22 oil and gas prices were pretty high at that time?

23 A. Yes, they were.

24 Q. So that there was a reasonable expectation that  
25 the company would be able to afford compliance with the rules

1 at that time?

2 A. Given the prices at that time, that's what we  
3 were hoping.

4 Q. Did you deal with local Xeric people? Or did the  
5 Division? Or were all contacts made with the Houston office?

6 A. They were made with the -- I believe it's the  
7 Houston office.

8 Q. So as far as you know, there weren't any local  
9 Xeric people to work with?

10 A. Not that I was aware of, no.

11 COMMISSIONER BAILEY: That's all I have.

12 CHAIRMAN FESMIRE: Commissioner Olson?

13 COMMISSIONER OLSON: I have no questions.

14 EXAMINATION

15 BY CHAIRMAN FESMIRE:

16 Q. Mr. Sanchez, you said that the sundries were  
17 provided to OCD but not put into the system; is that correct?

18 A. Yes, sir.

19 Q. Why were they not put into the system, and why  
20 was that not considered a filing?

21 A. I don't believe they were submitted to the  
22 district office. They were submitted to Santa Fe. On a  
23 regular basis, they would be submitted to the district office.  
24 They would review them and go ahead and file them there.  
25 They'd be scanned in and put into the system from the district

1 office, not from Santa Fe.

2 Q. Did Xeric have any reason to believe that they  
3 were filing them when they presented them to you?

4 A. Not that I'm aware of, no.

5 Q. Have you ever heard them say that they thought  
6 that was a filing?

7 A. No.

8 Q. What was the intention of giving them to you and  
9 not filing them?

10 A. I believe to show that they had some intent on  
11 working on those wells.

12 Q. So did you have an impression that they knew they  
13 still needed to file them when they left here?

14 A. I don't remember.

15 Q. Now, you said there was a change in the  
16 calculated amount of initial bonding required because the depth  
17 of one well changed.

18 A. Yes.

19 Q. Why was that mistake in the OCD records?

20 A. I think it was just a number error. These might  
21 not be the right numbers, but it was originally seen as a --  
22 written down as 50,000, which was calculated out on the  
23 program. And when Dorothy reviewed it, it was a 5,000-foot  
24 deep well, not 50,000.

25 Q. So our records showed a 50,000-foot depth for the

1 bonding?

2 A. Like I said, I'm not really sure about the exact  
3 depth, but it was large. It was large enough to make an error  
4 of over \$100,000.

5 Q. But eventually that did send up a flag?

6 A. Yes, it did.

7 MS. ALTOMARE: If I might, Commissioner, according to  
8 Ms. Phillips, we're not sure whether the error arose from the  
9 original reporting from the predecessor of Xeric or whether it  
10 arose from the entry here, but, yeah.

11 CHAIRMAN FESMIRE: Do we have any more problems like  
12 that anywhere?

13 MS. ALTOMARE: Other operators have noticed it as the  
14 program has gone into force and brought it to Dorothy's  
15 attention, and then she's corrected it in due course.

16 CHAIRMAN FESMIRE: Do we think our data is pretty  
17 clean now in that respect?

18 THE WITNESS: Yes.

19 CHAIRMAN FESMIRE: I have no further questions. Do  
20 you have a redirect?

21 MS. ALTOMARE: A couple of clarification questions.

22 REDIRECT EXAMINATION

23 BY MS. ALTOMARE:

24 Q. Mr. Sanchez, just to clear things up, the  
25 sundries that were submitted at the last hearing were submitted

1       only as an exhibit by Xeric; isn't that right?

2               A.   Yes.

3               Q.   And there was testimony provided at that hearing  
4       by Xeric principals that they plan to file them either that day  
5       or later that week formally with the district.

6               A.   I believe that was the case.

7               Q.   Okay. And, then, in terms of missed promises, at  
8       the April conference, there was testimony provided at the last  
9       hearing, and it's your understanding, isn't it, that  
10      Mr. Collier indicated that he would set up a meeting before the  
11      May hearing if the hearing was continued?

12              A.   Yes.

13              Q.   And that was never done?

14              A.   That's correct.

15              Q.   And he would begin working on bonding with the  
16      bonding administrator, and that was never done?

17              A.   That's correct.

18              Q.   And, then, at the June meeting, they were to come  
19      up with a timeline and report that they never ended up doing  
20      until mid-August, right?

21              A.   That's correct.

22              Q.   And, again, they promised to do the bonding, and  
23      that was never done?

24              A.   That's correct.

25              Q.   And the June meeting they also promised to begin

1 working with the district office; is that right?

2 A. That's correct.

3 Q. And they didn't appear to begin doing that until  
4 very late in the game as well; is that right?

5 A. Yes.

6 Q. In the same vein, after the September hearing,  
7 they requested that we give them a specific contact at the  
8 Hobbs District Office. Was that contact name given to them?

9 A. Yes, it was.

10 Q. And what, if any, contact has the Hobbs District  
11 Office received from Xeric personnel since the September  
12 hearing?

13 A. I don't think they've had any contact since the  
14 hearing.

15 Q. Okay. Once again, at the September hearing, do  
16 you recall hearing testimony that Xeric planned to begin making  
17 efforts to post the bonds or understood that they needed to  
18 take steps to begin posting bonds?

19 A. Yes.

20 Q. And have they done so?

21 A. No.

22 MS. ALTOMARE: Thank you.

23 CHAIRMAN FESMIRE: Ms. Munds-Dry, anything further on  
24 those subjects?

25 MS. MUNDS-DRY: No further questions. Thank you.

1           CHAIRMAN FESMIRE: Anything further from the  
2 Commissioners?

3           Why don't we take a 15-minute break and reconvene at  
4 25 to 11:00.

5           [Recess taken from 10:19 a.m. to 10:39 a.m., and  
6 testimony continued as follows:]

7           CHAIRMAN FESMIRE: We'll go back on the record. At  
8 this time, we will reconvene Case 14106. The record should  
9 reflect that after the break all three Commissioners are  
10 present, and we still do have a quorum.

11          Ms. Altomare, you've just finished with your first  
12 witness, and you have a second witness by affidavit, I believe.

13          MS. ALTOMARE: Yes. It is Exhibit 1, which has been  
14 admitted.

15          CHAIRMAN FESMIRE: Okay. Ms. Munds-Dry, you have no  
16 objection to an admission by affidavit?

17          MS. MUNDS-DRY: No objection.

18          CHAIRMAN FESMIRE: Ms. Munds-Dry, do you have an  
19 opening statement?

20          MS. MUNDS-DRY: Thank you. Chairman Fesmire,  
21 Commissioner Bailey, Commissioner Olson, today you'll hear from  
22 three persons responsible for the future of Xeric. But let me  
23 back up very briefly and give you a short history of what has  
24 happened since the new partners acquired Xeric in March of  
25 2008.



1           As was stated by Mr. Sanchez -- and you've heard  
2 earlier -- the new partners for Xeric bought or acquired Xeric  
3 in March of 2008. It may have been coincidence, but as it  
4 turns out, their welcome package was an OCD application seeking  
5 compliance against them.

6           There were three partners originally who acquired  
7 Xeric. There was one, primarily Mr. Collier, who was  
8 responsible and was set to be in charge of the New Mexico  
9 properties and operations. As you heard previously, and as you  
10 will also hear from the two individuals who are still with  
11 Xeric today, he was entrusted with those operations. He did  
12 have meetings with the OCD and made certain promises to the  
13 Division about what could be accomplished.

14           Unfortunately, that partner, Mr. Collier, went on to  
15 other things. And the two remaining individuals were left  
16 unaware for a period of time that that had occurred. Once they  
17 became aware, they quickly realized that there was a lot of  
18 ground to cover, came to New Mexico, and you'll hear them  
19 testify about their efforts since they have been in charge of  
20 the New Mexico operations.

21           There were at least two individuals at that time who  
22 were responsible for all of these New Mexico properties, and  
23 given the tremendous list that you see before you, they  
24 realized with their time and resources that it quickly was too  
25 much for them to handle on their own, frankly, both financially

1 and just from a time perspective..

2 You will hear them testify today, though, about what  
3 they have been attempting to do and come into compliance with  
4 all the Division rules. It's simply just been too much, and  
5 there's been too little time for them to take care of all of  
6 the issues that they discovered were in front of them.

7 They have now -- and you will also hear as our last  
8 witness -- brought on a new partner, Mr. Fielder, who is part  
9 of another company who will bring them the resources, both  
10 financially and from a manpower standpoint to make much more  
11 aggressive progress here in New Mexico. And they have every  
12 intention of doing that.

13 And with that, I would like to call my first witness.

14 CHAIRMAN FESMIRE: Okay.

15 MS. MUNDS-DRY: I'd like to call Adam Hirschfeld.

16 CHAIRMAN FESMIRE: Okay. Before we start, would all  
17 of the witnesses stand and be sworn, please.

18 [Witnesses sworn.]

19 CHAIRMAN FESMIRE: Mr. Hirschfeld, would you come  
20 forward, please?

21 MS. ALTOMARE: Mr. Chairman, before we begin, if I  
22 might,.

23 Ms. Munds-Dry, you indicated you were going to be  
24 filing an amended pre-hearing statement adding Mr. Fielder. I  
25 have not received an amended re-hearing statement. Was there

1 one?

2 MS. MUNDS-DRY: There was, and I'm sorry. I'm really  
3 trying to get them to her, and I --

4 MS. ALTOMARE: Was the substance of it the same, just  
5 the addition --

6 MS. MUNDS-DRY: Just the addition.

7 MS. ALTOMARE: If you could get me a copy of that  
8 afterwards, I'd appreciate it.

9 MS. MUNDS-DRY: Sure.

10 CHAIRMAN FESMIRE: Is that the one that you filed on  
11 February 19th, dated February 19th?

12 MS. MUNDS-DRY: Yes, sir. And I do promise,  
13 Mr. Chairman, we're really trying not to keep information from  
14 Division counsel.

15 ADAM HIRSCHFELD

16 after having been first duly sworn under oath,  
17 was questioned and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. MUNDS-DRY:

20 Q. Would you please state your name for the record.

21 A. Yes. Adam Hirschfeld.

22 Q. Mr. Hirschfeld, where do you reside?

23 A. In Ohio.

24 Q. By whom are you employed?

25 A. I'm employed by Xeric as a consultant.

1 Q. And your capacity is as a consultant?

2 A. I basically handle all the back office financing  
3 and operations for Xeric.

4 Q. And what do those duties with the back office and  
5 operations include? What are those responsibilities including?

6 A. It basically includes making sure that we're  
7 properly financed to take on any responsibilities we have in  
8 relation to financing, workovers on the wells and/or plugging  
9 and/or placing financials assurance bond requirements. It also  
10 requires me to manage whatever office staff required for filing  
11 C-115s and sundry notices in a timely manner.

12 Q. Are you familiar with the application that was  
13 filed by the Division in this case or in the underlying case?

14 A. Yes, I am.

15 Q. Can you tell me when did you acquire Xeric Oil  
16 and Gas Corporation?

17 A. The effective date of contract was March 1, and  
18 that was signed on March 5th, 2008.

19 CHAIRMAN FESMIRE: Ms. Munds-Dry, when you say "you,"  
20 you mean his client?

21 MS. MUNDS-DRY: I'm sorry. And we'll explain that in  
22 just a little bit. But his role has changed with Xeric and  
23 so -- he was part of the original acquisition. And I can ask  
24 Mr. Hirschfeld that to clarify what has happened there.

25 CHAIRMAN FESMIRE: At your leisure, just to clarify

1 that.

2 Q. (By Ms. Munds-Dry): Mr. Hirschfeld, you stated  
3 you were a consultant or an agent for Xeric. Has your role  
4 changed since Xeric was acquired in March of 2008?

5 A. Correct. I was a part of the group that brought  
6 the original capital into Xeric to acquire it, as well as to  
7 finance the day-to-day operations. Over the last months with  
8 the company's acquisition of a new partner with Resilient  
9 Energy, my role has changed just a little bit in the  
10 restructuring.

11 Q. So you're no longer a president or no longer an  
12 officer of Xeric?

13 A. That's correct.

14 Q. Okay. I'd like to talk about what the  
15 individuals who are now responsible for Xeric has done since  
16 Xeric was acquired. And let's break it down in steps if we  
17 could.

18 A. Okay.

19 Q. Before the Division hearing, what was your focus  
20 in terms of your New Mexico operations?

21 A. Our focus was to get into compliance and to  
22 communicate extensively with the OCD and to work with any means  
23 we had necessary to work with the State.

24 In previous operations in my relationship with  
25 Mr. St. John and Mr. Collier, we had a successful history in

1 other states of bringing properties that weren't compliant back  
2 into compliance. So prior to the original hearing we were to  
3 accomplish that goal, and we had placed Mr. Collier in the  
4 position to correspond with the State of New Mexico because of  
5 his familiarity with the field, with the properties, as well as  
6 OCD regulations.

7 Q. You stated previously that your main functions  
8 had been back office administrative operations.

9 A. Correct.

10 Q. What were your responsibilities during that time?

11 A. My responsibilities were to, basically, at that  
12 time, to raise capital and to manage the resources that we had.  
13 We did implement some improvements on the field when it comes  
14 to -- I believe it was Case 14107, or whichever the pit 301 on  
15 the West Pearl Queen was. We had improvement on that.

16 And we also tested some workovers on some of the  
17 wells to see if there was a way that we could increase our  
18 production and make this all financially viable as we were  
19 returning these wells to production.

20 Q. And when did you become aware that Mr. Collier  
21 had made certain promises to the Division?

22 A. I was present in the meeting in June. And I was  
23 also -- I became aware of some of the promises he made at that  
24 meeting. And I had checked up with him the following month,  
25 and he had confirmed with me that he was communicating back and

1       forth with the OCD in preparing the necessary statements or  
2       paperwork that we wanted to submit to show which wells we were  
3       going to address first.

4               And it came to my attention right around the first  
5       week of August that -- when you had actually contacted me --  
6       that this communication was not being done in a timely manner.

7               Q.   Okay.  So your counsel had contacted you that we  
8       had made some promises to the Division, and they were yet to be  
9       fulfilled?

10              A.   Correct.

11              Q.   Okay.  We went to hearing on this matter in  
12       September of 2008, Mr. Hirschfeld, and after that hearing, what  
13       became, then, the focus of your efforts and operations in  
14       New Mexico?

15              A.   Our only focus in our entire business, basically,  
16       was to get our wells compliant and improve the overall --  
17       basically, improve all the properties in New Mexico.

18              We had pinpointed the Pearl Queen properties as the  
19       main area of issue.  When you look at the well lists or the  
20       bonding lists, the Pearl Queens are overwhelmingly the most  
21       non-compliant properties.  So with this, we wanted to basically  
22       attack the properties and clean up the surface area, try to  
23       alleviate any environmental problems, as well as taking the  
24       well bores off of the noncompliance list.

25              Q.   Were you present for Mr. Sanchez's testimony?

1 A. Yes.

2 Q. And you were present when he discussed the  
3 sundries that Xeric actually offered for the last hearing, the  
4 OCD hearing, which I believe is Exhibit No. 2 for the Crosby  
5 and Gregory wells?

6 A. Uh-huh.

7 Q. What happened with those wells?

8 A. Well, actually, leading up to that hearing, we  
9 were contracting with a company called Phoenix Environmental to  
10 prepare the roads and the well locations so that we could rig  
11 up and test the anchors and do everything necessary to fulfill  
12 those sundry notices, which I had prepared as an exhibit.

13 And after leaving the hearing, we had changed our  
14 focus from the Crosby and Gregory units to the Pearl Queens,  
15 being that they were substantially the most non-compliant and  
16 were the most inactive wells.

17 Q. What other efforts did you undertake to come into  
18 compliance with Division rules?

19 A. Ron and I were the active principals at the time,  
20 and we had contracted a company called Baker Energy, who is a  
21 reputable contractor and surfaces manager to basically improve  
22 our amount of boots on the ground and improve our ability to  
23 get work done.

24 And they had started to correspond with the district  
25 office from that point forward. And we had begun to rig up on



1 the Pearl Queens, as well as cleaning up the surface area.

2 Q. And from that time forward, did you have any  
3 contact with the Division district office?

4 A. I had not. I was corresponding with Baker's  
5 compliance officer, which was Whitney Boyd. And I believe  
6 you'll see she signed the sundry notices for the work from  
7 September forward.

8 Q. That was one of the reasons you hired Baker  
9 Energy?

10 A. Exactly. Because the overwhelming amount of  
11 work, we had to bring in some more resources.

12 Q. And what kind of work did Baker Energy perform  
13 for Xeric, generally speaking?

14 A. We had begun by going out to the Pearl Queens  
15 first and cleaning up locations, taking any scrap equipment and  
16 any debris off of the locations and getting that cleaned up.

17 We followed that by beginning to rig up on inactive  
18 wells to test our ability to return to production, also swab on  
19 them to get some type of production for now and see what kind  
20 of production we would get once we returned it.

21 And we also did return to production any wells that  
22 were nearby that weren't necessarily inactive, but were down  
23 because of parted rods or tubing or anything of that sort. So  
24 we did work over the wells that we -- we really did need to  
25 produce just to keep our business going.

1 Q. And as a result of Baker Energy's work, how many  
2 wells were you able to bring into compliance?

3 A. I believe it was seven that we took off the  
4 inactive well list.

5 Q. And what period of time did Baker Energy perform  
6 the work they did for you?

7 A. They worked from around mid-September to right  
8 before Thanksgiving.

9 Q. And not to be crass, but do you know how much you  
10 have spent with the work you've done with Baker Energy to date?

11 A. We have been billed over 700,000 for that work so  
12 far.

13 Q. Mr. Hirschfeld, Mr. Sanchez testified that he did  
14 not see any record of any single well bonds being yet posted.  
15 Why has Xeric not posted the single well bonds?

16 A. We are kind of a small company, and we are in the  
17 business of producing oil and gas for revenue so we can  
18 continue to grow our business.

19 Our goal from the beginning has been to return these  
20 wells to production because we see a very valuable project in  
21 it. There are some overwhelming responsibilities to take care  
22 of first, or as we continue to develop the field, but our  
23 financial capabilities haven't allowed us to move at the pace  
24 that we wished.

25 Q. Have the current prices in the oil and gas

1 markets affected your ability to capitalize your efforts here  
2 in New Mexico?

3 A. They have affected us on the bottom line of the  
4 company, as well as our ability to place capital for operations  
5 in growing the company. They have.

6 Q. If Xeric had to post all the single well bonds  
7 that were now due to the Division, how would that affect your  
8 efforts to continue to do work on the ground on the wells?

9 A. We would be incapable of doing it.

10 Q. How would it affect your operations overall in  
11 New Mexico?

12 A. Well, we really wouldn't be a viable company at  
13 that point.

14 Q. Mr. Hirschfeld, in addition to you wanting to be  
15 in compliance, why does Xeric want to bring your wells back  
16 into production?

17 A. We want to bring them back into production  
18 because we know the properties that are non-compliant and  
19 inactive are very good properties and have the potential for  
20 great production.

21 It's been our goal to build a company around these  
22 New Mexico properties just because of the quality of them. And  
23 we've had some bumps in the road, but it is still our absolute  
24 goal to get them returned to production.

25 As you know, every well we did rig up on did produce

1 oil in a swab test. So we know that we can return them all to  
2 production.

3 Q. Going forward, what are your plans for continuing  
4 to bring your wells back into compliance?

5 A. Well, the company has brought on a new partner  
6 with Resilient Energy. And in that relationship, we'll have  
7 essentially doubled the management, as well as bring on a  
8 partner that would be -- his sole responsibility would be to  
9 work over the Pearl Queens and the peripheral New Mexico  
10 properties that are non-compliant. And our goal is to grow the  
11 company and utilize the properties in our portfolio in  
12 New Mexico as a strong base in assets for our company.

13 Q. All right. You also heard Mr. Sanchez's  
14 testimony about Xeric having a long history in New Mexico of  
15 being non-compliant and the members of that company being  
16 absent. What efforts do you plan to undertake to change that  
17 perception and that reality here in New Mexico?

18 A. Well, our goal is to not only bring -- in  
19 bringing the wells back into compliance are to abide by the  
20 regulations of the State of New Mexico. In no way is there a  
21 desire for us to not be in regulation.

22 But we are working in earnest to bring forth the  
23 resources necessary to not only return the wells to compliance  
24 and production, increase the revenue base for the company and  
25 the State, but to basically utilize the resources we have to

1 make the most of these properties.

2 Q. You understand from Mr. Sanchez's testimony today  
3 that the Division is seeking to plug all of your wells and is  
4 also seeking a penalty?

5 A. Correct.

6 Q. What is your response to that request?

7 A. I just can't really see how that's -- I  
8 understand there's a legal responsibility we have and that we  
9 inherited with the company, Xeric, and the properties, but  
10 what's best for what -- I believe what's best for the State and  
11 the properties and the company is for us to get them to return  
12 to production. And I would wish that our resources were a  
13 little bit greater than they are now, but I do see them  
14 continually improving over time as we make the right business  
15 decisions in developing these fields and relationships with new  
16 partners in the capital markets.

17 Q. Do you believe Xeric committed a knowing and  
18 willful violation that would subject them to the civil penalty  
19 that's being requested in this case?

20 A. We did not. We do know these properties for the  
21 most part have many inactive wells even prior to 2006 since the  
22 last production. And that goes a couple of owners back in this  
23 company. And we did not knowingly try to commit any violation  
24 whatsoever. We did knowingly try to take control of the  
25 property and bring them back into compliance and improve them,

1 but our resources have limited our speed in doing so.

2 Q. Thank you.

3 MS. MUNDS-DRY: That concludes my direct examination  
4 of Mr. Hirschfeld. Pass the witness.

5 CHAIRMAN FESMIRE: Ms. Altomare?

6 CROSS-EXAMINATION

7 BY MS. ALTOMARE:

8 Q. Mr. Hirschfeld, I'm a little confused. What is  
9 your actual title now with Xeric?

10 A. I do not hold an office or direct position with  
11 the company possession. I act as a consultant and at this  
12 point manage all operations for the company on a full-time  
13 basis.

14 Q. Do you have any interest in the company?

15 A. I do not own an interest in the company at this  
16 point.

17 Q. Okay. Who are the interest holders in the  
18 company now?

19 A. Ron St. John and the new partner with Resilient  
20 Energy.

21 Q. Okay. So when you refer to Mr. Fielder --

22 A. Yes.

23 Q. -- as a new partner, you're not referring to him  
24 as your new partner. He's a new partner involved in Xeric?

25 A. Exactly.

1 Q. Okay. Why did you decide to step down as a  
2 principal in the company?

3 A. The reorganization stemmed from my investor group  
4 financing the original acquisition of the company and the  
5 further development of the company. And since this new  
6 partnership has taken form, that investment group is in the  
7 position of basically being weaned out of the company.

8 Q. Okay. Because you were the majority shareholder  
9 at the last hearing; isn't that right?

10 A. Actually, it was just about a 50/50 breakdown.

11 Q. Okay. I think I recall you testifying you were  
12 the majority shareholder, and you were the president; is that  
13 right?

14 A. Right. But the books were cleaned up, and we  
15 were about 50/50.

16 Q. Okay. So, again, you were not involved in the  
17 original telephone conference that took place in April after  
18 the filing of this application?

19 A. Correct.

20 Q. But you had knowledge that Mr. Collier was at  
21 that time acting on behalf of Xeric?

22 A. He was.

23 Q. And at that point in time, you were secretary?

24 A. Correct.

25 Q. Okay. Mr. Collier contacted you after that

1 telephone conference, right?

2 A. He did.

3 Q. And informed you that the conference had taken  
4 place and that you needed to retain counsel?

5 A. Yes, that's correct.

6 Q. And he advised you that the application had been  
7 filed and that you had to respond?

8 A. Right. I don't recall every word in the  
9 conversation, but we covered the issue as well as what he knew  
10 to tell me.

11 Q. At the time that you-all -- you, Mr. Collier, and  
12 Mr. St. John -- acquired Xeric, you were already aware that it  
13 was a problem company, that it had issues, inactive well,  
14 environmental issues, and whatnot?

15 A. No, I think that's an assumption. We knew that  
16 there were well bores that had to be returned to production.  
17 But our previous operating history in Montana and Wyoming --  
18 when you say a problem company, there's a problem company with  
19 the position we're in now, and then a problem company with  
20 needing to return wells to production because the revenues  
21 increase.

22 The position we were in is that we had to return  
23 wells to production to increase revenue for the company. When  
24 we completed our due diligence in the well files, any OCD  
25 communications were apparently not included in those well



1 files. And any prior communications between the OCD and Xeric  
2 we are trying to track down but still have not seen.

3 Q. Okay. At the time you acquired Xeric, you were  
4 aware that there were out of compliance wells?

5 A. We were aware there were inactive wells.

6 Q. And that there were environmental issues that  
7 needed to be addressed?

8 A. We were aware of one environmental issue in the  
9 West Pearl Queen pit 301, and that undertaking, the cost was  
10 warranted by the previous owner. They didn't fulfill their  
11 obligation, but we still fulfilled our obligation of taking  
12 care of that pit.

13 Q. Okay. Do you recall testifying at the previous  
14 hearing that the due diligence that you are referring to was  
15 kind of abbreviated and that it wasn't a real in-depth process  
16 prior to acquiring Xeric?

17 A. We searched through all the well files and did  
18 tour all the fields with the previous owner. So it was as  
19 in-depth as previous projects had required of us.

20 Q. Okay. And you never contacted the Oil  
21 Conservation Division directly to inquire further regarding  
22 actual well files housed here or regarding any records we might  
23 have regarding violations or pending issues with Xeric?

24 A. No, I did not.

25 Q. Did you contact the Oil Conservation Division to

1 find out specifically what your obligations would be as an  
2 incoming operator in New Mexico?

3 A. I did not.

4 Q. Okay. But you were aware that as an operator in  
5 New Mexico you would be required to comply with New Mexico Oil  
6 Conservation Division rules?

7 A. I was aware that that's inherent to the State,  
8 exactly. And once again, Tim Collier was the quote, unquote,  
9 professional associated with New Mexico, and he was the leading  
10 resource in acquiring these assets.

11 Q. But you are the individual who is and has always  
12 been responsible for making arrangements for bonding, making  
13 arrangements for filing reports and whatnot with the regulatory  
14 agency?

15 A. Correct.

16 Q. Okay. When did you become aware of the single  
17 well bonding financial assurance obligation under New Mexico  
18 rules?

19 A. I had become aware of the case after that phone  
20 call with Mr. Collier in April, and on the exact amount of  
21 wells and amount of bonding required for those wells was most  
22 specifically made available during the September hearing.

23 Q. Okay. But in general, when were you aware that  
24 New Mexico had financial assurances obligations for single  
25 wells that had been inactive for an excessive amount of time?

1           A. It's tough to remember exact dates, but I would  
2 say at least by the time you and I were together in June at  
3 this time, meeting.

4           Q. Okay. And during that June meeting, there were a  
5 number of things discussed, including the OCD's concerns about  
6 inactive wells that Xeric had; is that right?

7           A. Yes.

8           Q. As well as the financial assurances that were  
9 owed by Xeric?

10          A. Uh-huh.

11          Q. And at that time, Xeric agreed to come back to  
12 the OCD with some kind of a plan of action about how it  
13 decided -- how it planned to prioritize its efforts to come  
14 into compliance?

15          A. Right. The president of Xeric at that point was  
16 Mr. Collier, and we had agreed to do that. And he was given  
17 the task of administering that.

18          Q. Okay. And that report was to have information  
19 regarding some kind of a time frame for coming into compliance  
20 with the rule -- what's previously been referred to as Rule 201  
21 and Rule 101 for the inactive well and financial assurance and  
22 noncompliance?

23          A. As I recall it, it was to include the wells that  
24 with were to work over in the immediate future and then a long  
25 term plan.

1 Q. Okay. And that was to be given to the OCD with  
2 enough time to review prior to the next hearing so we could  
3 determine whether or not we go needed to go forward with the  
4 hearing; is that right? Is that your recollection?

5 A. Once again, I don't remember all these  
6 specifically, but that makes sense that that would have been  
7 the purpose of it.

8 Q. Okay. And again, that occurred in June, and the  
9 next hearing, I believe, was set in July?

10 A. Correct.

11 Q. And Mr. Collier or your company never got us  
12 anything before that July hearing, did you?

13 A. No, ma'am.

14 Q. You indicated that you were advised in August  
15 that we still had not been provided with that report. You may  
16 have stated this already, but how did that come to your  
17 attention?

18 A. Counsel had contacted me, basically, stating that  
19 there had to be a report. The report that was referenced in  
20 June had to be prepared and filed as the hearing was coming in  
21 the first week of September, if I recall that right.

22 And I do remember thinking about maybe even asking  
23 counsel -- but once again, it's a phone conversation -- why it  
24 wasn't completed, and not really recalling why it wasn't  
25 completed, and we tried to contact our partner at the time,

1 Mr. Collier, and I, in turn, completed the report.

2 Q. Okay. So you were the one that actually  
3 completed the report?

4 A. Yes.

5 Q. And you were at that June meeting where we  
6 discussed what was to be included in that report?

7 A. Yes.

8 Q. What is the explanation for why that report  
9 didn't include more details as to what your plans were going  
10 forward for prioritizing your efforts to come into compliance?

11 A. The unfortunate circumstance, but it is a fact,  
12 that the task of completing that report should have been  
13 completed at the field level by our partner, Mr. Collier. And  
14 at the time, Mr. St. John was out working, and I had to  
15 complete the report to get it done in a timely manner.

16 And we were trying to reorganize and figure out how  
17 to move forward the best way. So to answer your question, I  
18 honestly didn't know how to complete the report properly.

19 Q. Okay. Did you, at any time, consider contacting  
20 the district office -- you had been given at least one person's  
21 name in that office -- for assistance in trying to complete  
22 that report and come up with some sort of more detailed  
23 framework for that report?

24 A. Mr. St. John had tried to visit with the district  
25 office a couple of times prior to me completing the report in

1 August, if I recall. And those were unsuccessful, and so at  
2 that point, I just completed the report and submitted it.

3 Q. Okay. But you, personally, did not make any  
4 efforts to either telephone, e-mail, by any means, contact the  
5 district office?

6 A. No, ma'am.

7 Q. Were you advised that the OCD was not satisfied  
8 with the content of the report upon receipt?

9 A. At the hearing I was advised of that, not prior.

10 Q. You do recall at the hearing, at the Division  
11 level, acknowledging that you understand that regardless of  
12 what you feel your financial constraints are that you're not  
13 supposed to be proceeding to operate, that you are operating in  
14 violation of OCD rules until you post those single well bonds?

15 A. That is my understanding. And unfortunately,  
16 we've had to use the resources that we have available to try  
17 and improve the circumstance of the situation on the field  
18 level as well as possible.

19 Q. Why is it that Xeric feels like the rules don't  
20 apply or apply special to them, whereas other operators have to  
21 post those bonds in order to continue operating?

22 A. I would say that's an assumption. We don't  
23 assume or think that we don't have to abide by the law or the  
24 regulations. We just do not have the resources or financial  
25 capability of posting these bonds.

1           And if we do not increase production, then we cannot  
2           continue to improve well bores.

3           Q.   But you continued to dedicate other money to  
4           other resources rather than post the money that is due to the  
5           Division at this time.

6           A.   Resources in improving locations, yes, we have,  
7           out of the production and out of what treasury we have  
8           available.

9           Q.   Okay. Regarding the testimony that was provided  
10          at the last hearing regarding the Gregory and the Crosby Deep  
11          leases that were initially the focus of Xeric's efforts to  
12          begin coming into compliance, you testified that after that  
13          hearing it was decided to shift the focus to the Pearl Queen  
14          properties?

15          A.   That's correct.

16          Q.   Did anybody in the Xeric framework ever advise  
17          anybody in the OCD that that focus had shifted?

18          A.   Baker had begun corresponding back and forth with  
19          the district office with, I believe, Buddy Hill and Lori  
20          Johnson. I'd have to go back and check my communications, but,  
21          yes, they had begun communicating with the district office on  
22          various areas on making sure they were doing things properly on  
23          the field level and communicating solutions and repairs on the  
24          field. So yes.

25          Q.   Okay. But having just provided testimony at the

1 hearing level, at the Santa Fe level that we could expect to  
2 receive a number of sundries to be filed, did anybody ever  
3 advise the OCD that those sundries were not going to be filed?

4 A. No. But a lot can happen in a couple of weeks,  
5 and during that time frame, we were on the field working with  
6 Baker and getting the problems fixed.

7 We had not informed you that we weren't going to file  
8 those Crosby sundries, but we had informed the district office  
9 of our intent and as well as asking questions about the best  
10 ways to get it completed.

11 Q. When you decided to shift your focus and let the  
12 Crosby and Gregory leases fall by the wayside, what happened to  
13 those BLM deadlines? Did you just decide those didn't matter  
14 either?

15 A. No. Once again, those sundries for the BLM were  
16 initially filed by the previous owner in May of 2008. They had  
17 no power to sign or authority to sign on the sundry with the  
18 BLM.

19 We had contacted the BLM and asked them, you know,  
20 "We just got approved sundry back from you that we didn't sign,  
21 that was signed by the previous owner two and a half months  
22 after they had given up control of the company. At this time  
23 we have to focus our attention on other wells. What is the  
24 best way to handle this?"

25 They informed us to file a sundry and to request an



1 extension. We continue to do this. And they had basically  
2 given us a final deadline for the February 1 time frame. Prior  
3 to the February 1 time frame, our goal was absolutely to  
4 complete working over the 1, 3, and 4 Crosby Deep wells in  
5 accord with those sundries, but the capital resources were  
6 delayed in doing so.

7 Q. In fact, didn't you list as your reason for a  
8 need for an extension on those rig availability?

9 A. Correct.

10 Q. And there's not --

11 A. But that was a couple of months prior to the  
12 final date. So I suppose I'd admit that we have to file an  
13 amended sundry as proof --

14 Q. Was there truly an issue with rig availability at  
15 the time that you filed the need for an extension?

16 A. I don't recall. I wasn't the one contracted.  
17 That's Ron's responsibility.

18 Q. Okay. You had mentioned that you have experience  
19 in other states bringing wells into compliance, and that was  
20 one of the things that made you think you wanted to take on the  
21 New Mexico Xeric wells.

22 I think at the previous hearing, you testified about  
23 Wyoming and Montana where you had taken on some Xeric wells; is  
24 that right?

25 A. Correct.

1 Q. What is the current status of the Montana Xeric  
2 wells?

3 A. Basically, at this point, as of December, as of,  
4 I believe, as of the first week of January, they aren't  
5 producing any more at this point. We have a big, deep discount  
6 on selling our oil up there. And we are reallocating our  
7 resources and pumpers to get them to return back to production  
8 here in the next month or so.

9 Q. In fact, aren't there only 26 wells in Montana,  
10 and out of that, 17 are shut-in?

11 A. That's correct.

12 Q. Only five are producing?

13 A. That's correct.

14 Q. Okay. And in the Wyoming wells, there's only ten  
15 wells up there; is that right?

16 A. That's correct.

17 Q. And only three of them are producing; seven of  
18 them are shut-in.

19 A. Seven of them are basically forced from Xeric  
20 because the pipeline with PRB gas was in bankruptcy, so that's  
21 not relevant.

22 Q. Okay. When you use as examples your history in  
23 other states for going in and revamping other delinquent units,  
24 that's not exactly applicable to the kind of numbers that we're  
25 talking about here in New Mexico, is it?

1           A. It isn't, but we did still do it, and we did  
2 accomplish it. I'm not going to say that we didn't overreach a  
3 little bit, but there's no question that we're still here  
4 trying to get it done.

5           Q. Let's talk a little bit about the corporate  
6 status of Xeric. You took over Xeric in March of 2008. Why  
7 haven't you filed the proper paperwork amending anything with  
8 the PRC here in New Mexico?

9           A. I believe -- I don't know.

10          Q. Okay. Does it surprise you to know that in  
11 New Mexico, according to the Public Regulations Commission,  
12 Xeric Oil and Gas still has the officers of Joe Cook and Walter  
13 King, and a registered agent of Gary Don Regan, and a mailing  
14 address of P.O. Box 7288, Odessa, Texas?

15          A. Yeah. That's the previous owner.

16          Q. So I can see a little bit of confusion here as to  
17 exactly which Xeric we're dealing with, particularly if some  
18 compassion is being asked for in the terms of the fact that  
19 you-all are new hands on this operatorship.

20          MS. MUNDS-DRY: Is there a question in there  
21 somewhere?

22          CHAIRMAN FESMIRE: It's a little bit argumentative,  
23 Counsel. Why don't you ask a question?

24          MS. ALTOMARE: Got ya.

25          Q. (By Ms. Altomare): Just for clarification

1 purposes, are you --

2 CHAIRMAN FESMIRE: I'm assuming that was an  
3 objection.

4 MS. MUNDS-DRY: That was an objection.

5 CHAIRMAN FESMIRE: Sustained.

6 MS. ALTOMARE: The Division is actually asking that  
7 the Commission enter an order plugging just the wells that were  
8 included in this application, not all of the Xeric wells. So  
9 just -- I think there was some testimony earlier. I just  
10 wanted to make sure that that was clear.

11 Q. (By Ms. Altomare): As Xeric proceeds to go  
12 forward, you intend to remain as a consultant as your role?

13 A. Yes, ma'am.

14 Q. Okay. And you don't intend to regain -- or, I  
15 mean, return to a position as a principal in the company?

16 A. As the right time is, I would enjoy that. But at  
17 this time, I can't give you a timeline.

18 Q. Okay. Give me just one minute. I think I might  
19 be done.

20 How many employees in New Mexico does Xeric employ?

21 A. We work subcontractors. And at this point, Ron  
22 St. John has been the main principal on the ground, and with  
23 new partnership for Xeric there will be another full-time  
24 employee on the ground in New Mexico.

25 Q. So up until now -- between, for instance, the

1 last hearing and now during your efforts to try and get into  
2 compliance, there's been a employee?

3 A. Well, that's not true, because we contracted  
4 Baker to be on the field, and, therefore, they were our  
5 employees on the ground.

6 Q. And how many individuals were working through  
7 Baker on behalf of Xeric though that project?

8 A. I know we had five or six working out of Hobbs on  
9 a full-time basis at that point, running contractors for the  
10 rig companies and the roustabouts.

11 Q. And again, Xeric has 110 wells in New Mexico?

12 A. That's correct.

13 Q. And 88 at the time were out of compliance?

14 A. Correct.

15 Q. Okay.

16 MS. ALTOMARE: That's all the questions I have.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 EXAMINATION

19 BY COMMISSIONER BAILEY:

20 Q. Do you still have contact with Baker Energy?

21 A. At this point, our contract is not still in place  
22 with them.

23 Q. So the one and only person that would be working  
24 in New Mexico would be Mr. St. John?

25 A. No. He'll also have another partner with Dan

1 Johnson who comes with Resilient Energy. And --

2 Q. Could you please repeat what energy company? I  
3 cannot really hear it.

4 A. Sorry. Xeric has formed a partnership with  
5 Resilient Energy.

6 Q. Resilient Energy. Okay.

7 A. And with that, we'll have a full-time hand or  
8 partner on the field level, as well, with Mr. St. John.

9 Q. So you will have two people?

10 A. Yes, ma'am.

11 Q. Okay. Do they have an office in Lea County?

12 A. We do not have an office in Lea County.

13 Q. So Mr. St. John is based in Houston?

14 A. Midland.

15 Q. Midland?

16 A. Yes, ma'am.

17 Q. Is Xeric up for sale?

18 A. Xeric is not up for sale.

19 Q. Why not?

20 A. Because we want to bring this to completion, and  
21 Xeric wants to bring the wells into production. They formed a  
22 partnership with another company to improve their manpower and  
23 management and capital resources, and they believe they can  
24 grow this company to be a good company.

25 Q. No plans to file bankruptcy?

1 A. No, ma'am.

2 Q. Can you give me a history of what companies each  
3 of the partners has been associated with for operations in  
4 New Mexico?

5 A. I'm sorry. Are you asking which companies we've  
6 hired as contractors or the experience any of us have had  
7 working with other operating companies in New Mexico?

8 Q. Have you ever been a principal in another company  
9 that has operated in New Mexico?

10 A. I have not.

11 Q. Has Mr. St. John?

12 A. I believe he has operated in New Mexico before,  
13 but I don't know.

14 Q. Okay. How about Fielder?

15 A. No.

16 Q. No experience. How about Collier?

17 A. Collier had extensive experience in the State of  
18 New Mexico.

19 Q. With what companies as operator?

20 A. Collier Sergo in the past; Collier Drilling  
21 Company. He drilled a lot of the wells in Lea County, New  
22 Mexico.

23 CHAIRMAN FESMIRE: Collier and Collier out of  
24 Artesia?

25 THE WITNESS: Collier and Collier. And that had

1 given us comfort at the time of the acquisition, his experience  
2 in the State of New Mexico.

3 Q. (By Commissioner Bailey): You made an  
4 interesting comment that Collier was in charge, but he's no  
5 longer in charge. But is he still associated with the company?

6 A. No, ma'am.

7 Q. Okay. So out of the original principals, you've  
8 backed out, Collier's backed out, Fielder has come on, and  
9 St. John has been the only continuing officer of the company?

10 A. The last statement is accurate. He's the only  
11 continuing officer. I haven't backed out, just the  
12 circumstance with relationships with our capital placed in the  
13 company required for my position to change, but my  
14 responsibilities haven't.

15 Q. I just keep hearing, "No, it's his fault. No,  
16 it's his fault. It's not my fault, but it's his fault."

17 So I'm trying to find out where the continuing  
18 responsibility can be placed for going forward, as you say.

19 A. And the continuing responsibility can be placed  
20 on the group that you see here today as witnesses between  
21 Mr. Fielder and myself and Mr. St. John and another associate  
22 with Resilient Energy, Dan Johnson.

23 Q. Thank you.

24 COMMISSIONER BAILEY: That's all I have.

25 CHAIRMAN FESMIRE: Commissioner Olson?



## EXAMINATION

BY COMMISSIONER OLSON:

Q. Well, I guess I'll follow up a little as well on some of these issues with compliance. It's my understanding, I think, from seeing from your pre-hearing statement Xeric filed that you're willing to enter into an agreed compliance order --

A. Yes, sir.

Q. -- with the Division. So is there any proposal that's been presented to the Division?

A. We have been working through that over the past couple of weeks, and I believe we are prepared to submit a proposal.

Q. But you don't have any proposal to even present to us here today as to how you would come into compliance?

A. I am not sure I'm the best person to submit a proposal to you, sir. I feel confident that we would be willing to submit a proposal at this meeting. I just don't feel I'm the best person to do that, sir.

Q. So someone else could answer that that's coming up?

A. I believe Mr. Fielder is probably the best to answer that.

Q. And I guess I'm a little confused because we're looking at -- I think what we're looking at here is posting over \$660,000 for bringing wells into compliance, but as I

1 understand it, you spent \$700,000 recently which you could have  
2 used to come into compliance.

3 So why wasn't that money used to come into compliance  
4 by posting single well bonds versus the work that was  
5 conducted?

6 A. We had spent that capital to improve the assets.  
7 Being completely honest, we had expected more wells to come off  
8 of the list and actually have a very substantial amount of the  
9 wells off the list to prove our consideration or our desire to  
10 get these wells back into overall compliance.

11 And that's the true intent of completing that work,  
12 as well as having viable production for the business.

13 Q. But it's my understanding that you spent  
14 \$700,000, and only seven wells were brought into compliance?

15 A. Right. And in clarification, we have at this  
16 point -- and, I guess, it's tough to answer that because yes,  
17 we've only taken seven wells off the list.

18 So -- sorry. Yes. We've only been able to take  
19 seven wells off the list so far with that work.

20 Q. Because I was just looking at that thinking  
21 that's roughly \$100,000 a well.

22 A. Well, there was a lot of surface work that had to  
23 be completed where a substantial amount of the capital was  
24 worked with roustabouts in cleaning up locations from previous  
25 operators. There was a lot of debris in places. And we did

1 have some work to complete to get wells back into production on  
2 some of the other wells not on the list.

3 Q. But wouldn't you expect to have the same kind of  
4 costs to bring the other wells on line as well?

5 A. Well, we believe moving forward that -- or Xeric  
6 believes that moving forward with new partners that we will be  
7 able to be more efficient in that we don't expect it to be  
8 cheap, but we do expect to be able to allocate and place  
9 capital for specific items in improving field locations and  
10 well bores.

11 Q. It just seems to me that if you're looking at  
12 \$100,000, which is what you've done so far, \$100,000 a well,  
13 and you've got 81 wells to go, you're looking at --

14 A. \$8.8 million, but we don't expect that to be the  
15 way moving forward. We have a substantial amount of the  
16 cleanup done. There is more cleanup to continue with. We have  
17 a substantial amount of it completed.

18 And we do have a lot of work to be done on well  
19 bores. And we don't expect it to be cheap, but we know in our  
20 business that we are capable of placing the capital to improve  
21 and return to production well bores.

22 Q. I guess at best, then, how many wells can you  
23 bring online and in what kind of time frame?

24 A. Is this to be an agreed compliance order at this  
25 point in my statement?

1 MS. MUNDS-DRY: Commissioner Olson, we're going to  
2 have Ron St. John and Mr. Fields, and I think both of those  
3 gentlemen are better equipped to give you -- particularly  
4 Mr. St. John, who is an operations person, who can give you the  
5 field experience as to what kind of work they can do and in  
6 what kind of time period.

7 CHAIRMAN FESMIRE: But I would like to hear  
8 Mr. Hirschfeld answer the question. I understand what you're  
9 saying, but I would like to hear the answer to that question.

10 How many wells can you bring back into compliance?

11 THE WITNESS: I believe in our financing  
12 conversations and economics and trying to place the capital, we  
13 were expecting to have 40 wells back into compliance and  
14 returned to consistent production in the first year.

15 CHAIRMAN FESMIRE: First of 2009?

16 THE WITNESS: Within 12 months from rig-up date.

17 CHAIRMAN FESMIRE: Which was August --

18 THE WITNESS: August.

19 CHAIRMAN FESMIRE: -- expected to be.

20 THE WITNESS: Rig-up date with the new capital  
21 partners with Resilient moving forward, sir.

22 Q. (By Commissioner Olson): Well, I guess I come  
23 back to that same issue. If you can't put up the single bond  
24 money, which seems to be substantially less than what it would  
25 take to bring these wells into compliance, how are you going to

1 financially bring these wells into compliance, then?

2 A. We're able to raise capital and make markets for  
3 returning wells back to production. Investors that place  
4 capital haven't been willing in these markets to place capital  
5 for bonding. We are, however, able to place capital in  
6 redevelopment programs at the field level.

7 Q. So is Xeric, then, a corporation? Is what --

8 A. Xeric is a corporation.

9 Q. Okay. But that's not -- from what I understand,  
10 it's not reflected in any of the State records with the Public  
11 Regulation Commission?

12 A. That was also brought to my attention just now,  
13 sir. We are up-to-date on our filings and records where we are  
14 down south in the State of Texas, but, unfortunately, had not  
15 taken care of that in the State of New Mexico yet.

16 Q. So how many shareholders are there in Xeric?

17 A. At this point, one with Resilient. Resilient  
18 Energy has purchased the stock of the company.

19 CHAIRMAN FESMIRE: 100 percent of the stock?

20 THE WITNESS: 100 percent of the stock.

21 Q. (By Commissioner Olson): What kind of entity is  
22 Resilient, then?

23 A. Mr. Fielder is best to ask that from.

24 Q. Okay. Okay. I think you were testifying that  
25 Xeric doesn't have the financial capability to place a single

1 well bond. So, I guess, what evidence do we have of the  
2 financial condition of Xeric, other than what your testimony  
3 is?

4 A. Xeric is completing an audit to be a fully  
5 reporting company with Resilient as a wholly-owned subsidiary  
6 of Resilient Energy, of which to be clear, Ron St. John and  
7 Mr. Fielder and Dan Johnson are significant stockholders of  
8 Resilient Energy, I guess, to clarify that last question.

9 Q. But then -- okay. Well, maybe they can help  
10 answer that when they testify.

11 A. Yes, sir.

12 Q. I guess you were saying Xeric has producing  
13 properties in Montana and Wyoming. Do they have any in other  
14 states as well or just Wyoming and Montana?

15 A. Just those two states, yes, sir.

16 Q. And, I guess, why did Collier leave Xeric? He  
17 was a principal, I guess, when this purchase occurred?

18 A. Yes, sir.

19 Q. And so why did he leave?

20 A. I truly do not have a clear answer for that.  
21 When he had basically left Xeric, he had kind of just gone  
22 missing in action. It was tough for us to reach him. There  
23 was no, basically, no formal buyout or disagreement between any  
24 of us as partners, besides the fact that we had realized he  
25 wasn't fulfilling on his obligations with the company where

1 when you have partners, you generally trust in your partner to  
2 do his job.

3 His reasons for leaving the company we're not sure,  
4 and they would only be assumptions if I mentioned them. We  
5 didn't have anything that caused a quote, unquote, breakup,  
6 besides him not performing his duties towards the latter end of  
7 summer 2000 --

8 Q. But he was handling -- his role was to handle the  
9 New Mexico properties; is that what I understand?

10 A. Yes, sir.

11 Q. And where was he based out of then?

12 A. He was based out of Odessa and Roswell, back and  
13 forth in that area.

14 Q. Okay. I guess if these wells had to be plugged,  
15 what would you estimate the cost to plugging them to come in as  
16 part of the --

17 A. I have to be honest. I don't work on the field  
18 level, so I would have to ask Ron. If you were to ask me on  
19 the phone, I would call Ron and ask him the estimated cost for  
20 plugging the wells. But I'm going to assume the cost would be  
21 substantial.

22 COMMISSIONER OLSON: That's all the questions I have.

23 CHAIRMAN FESMIRE: I have a whole another sheet just  
24 off of your questions.  
25

## EXAMINATION

BY CHAIRMAN FESMIRE:

Q. Where is Mr. Collier now?

A. I think he's in Roswell.

Q. Okay.

A. Yes, sir.

Q. Why do you think he is in Roswell?

A. That's the last place we placed him. Yeah.

Q. Now, Mr. Collier was a partner in Xeric, wasn't he?

A. He was president of the company at that time.

Q. Okay. Was he an owner in Xeric?

A. CSC, LLC, had owned half of the stock in the company, and my investment group had owned about half the company.

Q. CSC is what?

A. It's just an entity that Mr. St. John and Tim Collier had opened together, just a company that owned the stock on behalf of their share of the company.

Q. Okay. CSC stood for Collier, St. John, and who?

A. Cross.

Q. Who's Cross? Is Mr. St. John going to testify to this?

MS. MUNDS-DRY: He'll be up next, Chairman Fesmire.

Q. (By Chairman Fesmire): Okay. Collier, St. John,



1 and Cross owned half of the stock in Xeric, right?

2 A. Yes, sir.

3 Q. Who owned the other half?

4 A. VRH Capital, my investment entity.

5 Q. Okay. Do you have an interest in VRH Capital, or  
6 are you just --

7 A. I'm the general partner of the group.

8 Q. Okay. And the general partner held what  
9 percentage of the partnership?

10 A. We didn't hold a specific equity portion. It's  
11 just a limited partnership that's structured as a hedge fund,  
12 so it's an asset management fee, and then I get paid off of  
13 profits of investments. Just a standard fund structure.

14 Q. Okay. You make a really interesting statement,  
15 to me. Between September and Thanksgiving Baker/Hughes billed  
16 you for \$700,000, correct?

17 A. Correct.

18 Q. How much did you pay?

19 A. At this point, we've paid \$300,000 of that  
20 billing.

21 Q. Okay. And what did you get for that \$700,000 in  
22 billing?

23 A. Roustabout service, rig time on the wells that we  
24 did work over. Basically, a comprehensive management services  
25 agreement, so they were working with us to manage the crews on

1 the field and correspond with the OCD filing sundries on a  
2 timely notice and so forth.

3 Q. And seven wells back on production?

4 A. Correct.

5 Q. How much oil and gas is Xeric making now? Let's  
6 see, the last reporting period in New Mexico was?

7 A. December. It's been filed so far --

8 Q. January because we're 15 days into February.  
9 What did Xeric make in January in New Mexico?

10 A. I don't have the specific number, but I would say  
11 approximately 700 barrels of oil for the month.

12 Q. And you do the books for Xeric, right?

13 A. I do have an assistant that does the C-115s and  
14 books.

15 Q. And the books? The financial books? Who does  
16 the financial books?

17 A. I've been handling the books.

18 Q. What was Xeric's cash flow in January of this  
19 year?

20 A. We honestly have not been paid for that yet.

21 Q. Okay.

22 A. I'm assuming it's going to be \$30,000 for the  
23 month.

24 Q. That's a positive cash flow of \$30,000?

25 A. No. That's a revenue number.

1 Q. That's a revenue number.

2 A. Our pumper costs -- we had some copper line  
3 stolen from the West Pearl Queen that cost us some money to  
4 repair. So our net for the month after the net revenue  
5 interests will probably be \$4- or \$5,000 at the end of the  
6 month.

7 Q. Okay. Now, let's talk a little bit about  
8 Resilient Energy. Who is Resilient Energy?

9 A. Resilient Energy is Mr. Kelly Fielder and Dan  
10 Johnson, and Ron St. John is also a part of Resilient Energy  
11 now as well.

12 Q. And they are the 100 percent -- they own  
13 100 percent of the stock of Xeric?

14 A. Resilient does own 100 percent of the stock of  
15 Xeric.

16 Q. Okay. And you are acting as a consultant to  
17 Xeric or to Resilient?

18 A. At this point, I've been acting as a consultant  
19 to Xeric, and the position is being transferred to Resilient as  
20 well.

21 Q. Now, is that as a consultant or a position?

22 A. Consultant.

23 Q. So who's your contract with?

24 A. My contract is with Resilient now.

25 Q. So you're a consultant to Resilient?

1 A. Exactly.

2 Q. Did you put the original deal -- and when I say  
3 original, I mean the second most recent transfer of Xeric --  
4 did you put that deal together? Not the one with Resilient,  
5 but the one before that?

6 A. It had been -- a lot of it was put together  
7 between Mr. Cook and Mr. St. John and Collier, and I had come  
8 down -- because I had invested and worked with Mr. Collier and  
9 Mr. St. John in the past, and I had come down and done the due  
10 diligence that I had done at the time, and so the deal was more  
11 put together by St. John, Collier, and Cook.

12 Q. Okay. And CSC was the holding company in that?

13 A. Yes, sir.

14 Q. And CSC was what percentage Collier?

15 A. It was 50 percent Collier.

16 Q. Okay. And CSC owned what percentage in the  
17 original purchase of Xeric? What percentage of Xeric did CSC  
18 buy?

19 A. 50 percent.

20 Q. And at that time, who retained the other  
21 50 percent?

22 A. My limited partnership.

23 Q. Okay. Your limited partnership?

24 A. Yes, sir.

25 Q. How did you get an interest at that time?

1           A. I didn't get an interest besides what was  
2 controlled by the limited partnership.

3           Q. Okay. So CSC bought the whole thing and carved  
4 out 50 percent for you or your company?

5           A. That's not correct. The capital was provided by  
6 my limited partnership initially for an acquisition. CSC had  
7 contributed to Xeric the properties that are up in the Rocky  
8 Mountains as their contribution for stock in the company.

9           Q. Okay. So you purchased Xeric, at least Xeric  
10 New Mexico; they contributed the Rocky Mountain properties.  
11 And at that point, the company was structured 50 percent CSC,  
12 50 percent your limited partnership?

13          A. Correct.

14          Q. Okay. Now, Mr. Collier didn't perform according  
15 to you, right?

16          A. That's correct.

17          Q. How did you get out of CSC/Xeric? Did you buy  
18 him out? Or did you just declare, "We own the properties?"

19          A. He was basically removed on the CSC level.

20          Q. When you say "removed," let's talk about -- I  
21 mean, he is a 50-percent owner. How do you remove a 50-percent  
22 owner?

23          A. He was an owner in CSC, which is 50-percent  
24 owner. He was removed from his position in Xeric as president.  
25 He was president at the time. And --

1 Q. But as a 50-percent owner in CSC, he still owns  
2 25 percent of Xeric.

3 A. Right. And Mr. St. John was the managing member  
4 of that LLC, and Mr. Collier was just a member.

5 Q. But the question is: He still owns 25 percent.  
6 How is he, quote, removed from a partnership where he  
7 essentially owns 25 percent of the company?

8 A. I am not an officer of CSC. I honestly do not  
9 dictate their actions and their books. I suppose I would  
10 suggest us producing corporate minutes for the company to you,  
11 if you wish. I'm not familiar with exactly how he was removed.  
12 I do know on the CSC corporation books --

13 Q. Is this a question we need to ask Mr. St. John?

14 A. I believe so. I know he has counsel for CSC as  
15 well that we could submit documentation on in the future as  
16 well.

17 Q. Well, I just want to know.

18 A. But you're interested now.

19 Q. Yes. The question, I guess, I'm asking is: We  
20 keep getting told that Mr. Collier is out, but it looks to me  
21 like he still owns 25 percent of the assets.

22 A. No. He would just have -- if that were true, if  
23 he were -- if that were the case, then he would simply be a  
24 holder in the LLC in which Mr. St. John -- or CSC. And CSC has  
25 a stock position in Resilient, but he's no longer an officer in

1 the company. So he's effectively out.

2 But if he owns stock still through CSC, then -- I  
3 don't know how to better explain it than that, sir. I suppose  
4 maybe he could effectively be a stockholder of Resilient, but I  
5 don't believe he is.

6 Q. Did the company buy Mr. Collier out? Or did  
7 something -- did Mr. Collier surrender his ownership interest  
8 in CSC/Xeric?

9 A. I know -- I don't know. I know there's been work  
10 done on CSC books with counsel between St. John and his counsel  
11 in Denver. I would honestly have to review the corporate  
12 minutes, sir, to give a clear answer.

13 Q. Let's talk about something, then, that's probably  
14 a little closer to home. What happened to your 50 percent  
15 interest? Did you sell it to Resilient?

16 A. We entered into a stock redemption agreement with  
17 Xeric just because the investors in the limited partnership  
18 were requesting redemptions as is customary with the rest of  
19 the market conditions.

20 Q. They wanted out?

21 A. Well, they wanted out. And as a general partner  
22 of the entity, I had to --

23 Q. You didn't have the capital? Somebody else had  
24 the capital?

25 A. Exactly.

1 Q. And they wanted out?

2 A. Exactly.

3 Q. And you cashed out --

4 A. No. They did not get cashed out yet.

5 Q. And they didn't get their stock redeemed?

6 A. Well, there's a note in place over a period of  
7 time, over 18 months, to be redeemed with the shareholders.

8 Q. Okay. So there's a note from Xeric --

9 A. From Xeric --

10 Q. -- or Resilient?

11 A. From Xeric to my limited partnership, which was  
12 assumed by Resilient in the acquisition.

13 Q. Okay. You've lost me.

14 A. Well, it all goes back to Resilient, at the end  
15 of the day, as we're trying to consolidate resources under a  
16 reporting company that hopes to increase our capital  
17 availability. It's a tough market to place capital now. And  
18 it's not an excuse, but we're just trying to improve our  
19 resources.

20 But the limited partnership that I'm the general  
21 partner of, I had a fiduciary responsibility to my investors  
22 too.

23 Q. Okay. Without a diagram, I don't think I'm going  
24 to be able to figure it out, so let me go on to my next line of  
25 questioning. Okay?



1 A. Yes, sir. Okay.

2 Q. You put the deal together. You did not know  
3 about Xeric's violations with the OCD. You didn't know that  
4 there was an action against them continuing?

5 A. I did not.

6 Q. Okay. And you did not have any communication --  
7 you did not have access to the communications between Xeric and  
8 the OCD?

9 A. That's correct. I did not have access to those.

10 Q. And when were you doing this work?

11 A. Last March.

12 Q. And did you think to check the OCD website and  
13 the OCD imaging system to look at the well files on these  
14 wells?

15 A. No, I did not.

16 Q. Now, you mentioned that the WPQ 301 -- the West  
17 Pearl Queen 301 -- pit has been taken care of. What did you  
18 mean by that?

19 A. Last summer Phoenix Environmental had taken the  
20 necessary steps to fill in that pit appropriately, and I  
21 believe there was a Case 14107, and I believe that that case  
22 has been dismissed. But it's been cleaned up and properly  
23 remediated.

24 Q. And Phoenix Environmental did that?

25 A. Yes, sir.

1 Q. What was the cost of that remediation?

2 A. I believe it was right around \$80,000 to fix that  
3 problem.

4 Q. And has Xeric paid for that?

5 A. We have paid for that.

6 Q. Now, Xeric has production in New Mexico, Wyoming,  
7 and Montana; is that right?

8 A. Yes.

9 Q. And if I understood your answer to  
10 Commissioner Olson's question, they have no other production?

11 A. That's correct.

12 Q. And they're making, out of that, all of that,  
13 about 700 barrels a day -- or a month?

14 A. In New Mexico, correct. Because for a short time  
15 as we're replacing our pumpers in Montana, we're not producing  
16 oil. We are doing about 8,000 MCF per month.

17 Q. 8,000?

18 A. Yeah. Per month in Wyoming.

19 Q. Okay. And out of that, you're deriving a cash  
20 flow of about \$4,000 a month at last month's prices?

21 A. No, sir. That was on the -- just the New Mexico  
22 numbers. I'm sorry.

23 Q. That was just New Mexico?

24 A. I'm sorry. Honestly, I haven't been able to see  
25 what we got paid from our purchases on the gas in Wyoming yet.

1 But I'd say our end-of-month cash flow between both properties  
2 is right around \$28,000, about.

3 We had received \$3 in MCF, approximately, for our gas  
4 in Wyoming. We sold about 8,000 MCP, so --

5 Q. And what kind of cash flow did that result in? I  
6 mean, that's gross proceeds.

7 A. That's gross. It's a 75 percent net.

8 Q. At least. And then you've got to pay your  
9 operating cost, your taxes, and things like that.

10 A. Correct. And our pumper is affordable up there.  
11 So maybe our net is more like \$20,000 for this month.

12 Q. Okay. You can see why I would be concerned as a  
13 taxpayer in New Mexico? You've got 110 wells in New Mexico,  
14 some of which are producing.

15 A. Yes, sir.

16 Q. Let's see, how many producing wells?

17 A. On a good day we have 16 wells producing, I  
18 believe, in New Mexico.

19 Q. 16 wells. And you're making 700 barrels a month  
20 out of 16 wells?

21 A. Right. When they're all producing, it's between  
22 700 and 900. Yes, sir.

23 Q. As a citizen in New Mexico, I'm a little  
24 concerned that that's not enough cash flow to do the things  
25 that you're going to have to do to those wells out there.

1           A. And that is why right now with the relationship  
2 Xeric has formed with Resilient there is an aggressive  
3 capital --

4           Q. You keep talking about like we're changing  
5 something with Resilient. But it looks to me like Resilient is  
6 mostly the same people that were Xeric.

7           A. Well, no. There are two more principals and  
8 various other employees associated with Resilient that  
9 Mr. Fielder can outline on. But by doing that, we improve our  
10 ability to place capital, which is what we require now.

11           We need to raise capital to increase our production  
12 and get the wells off the list. And I know we can do both of  
13 those together, but it does require us to raise capital. It  
14 does require us to raise capital. And with that, the step that  
15 Xeric took was the necessary step to increase our means of  
16 raising capital.

17           Q. So maybe I'm a little confused. Who were the --  
18 and I admit we're going back to a question that I previously  
19 asked, and I apologize for that, but apparently, I missed the  
20 answer. Who were the principals in Xeric? There was you.  
21 There was Mr. Collier.

22           A. Yes.

23           Q. There was Mr. St. John.

24           A. Yes.

25           Q. Who else?

1 A. That's it from the beginning.

2 Q. Now, who are the principals in Resilient?

3 A. The principals in Resilient are Mr. Kelly Fielder  
4 and Dan Johnson.

5 Q. Okay. Does Mr. St. John have an interest in  
6 Resilient?

7 A. He does.

8 Q. Mr. Collier had an interest in Xeric, and we  
9 don't know how he's out. Doesn't he have a position in  
10 Resilient if those assets go into Resilient?

11 A. Maybe Mr. Collier does, maybe he doesn't. That's  
12 a better question for Mr. Fielder. It just isn't my -- that's  
13 not my responsibility for that side, sir. But I know that  
14 there's an answer.

15 Q. Okay. But Mr. St. John or Mr. Fielder can answer  
16 that for us?

17 MS. MUNDS-DRY: I believe Mr. Fielder can answer that  
18 for you.

19 CHAIRMAN FESMIRE: Okay.

20 Q. (By Chairman Fesmire): So let's get back to our  
21 biggest concern here.

22 The average cost for -- well, let me talk about  
23 something else.

24 Recently, Chesapeake came in and asked for a  
25 waterflood expansion in one of their Pearl Queen units out

1 there very close. And if I remember correctly, they were going  
2 to have a 15 percent better EUR, 15 percent of the original oil  
3 in place, better recovery in the EUR than is projected in the  
4 West Pearl Queen unit.

5 A. Correct.

6 Q. So that's telling us there's a potential there.

7 A. There is potential there.

8 Q. But there is also a significant environmental  
9 liability.

10 A. Yes, sir.

11 Q. The average cost for OCD -- and granted, these  
12 are probably shallower wells out there -- but the average cost  
13 for the OCD to plug a well is about \$42,000 now. And, of  
14 course, things are changing fast. That's last year's average.

15 You've got -- if you've got 16 producing wells,  
16 you've got 94 wells that need to be plugged. And you're going  
17 to do that out of \$4,000 cash flow and new investors?

18 A. I believe that the capital program that Resilient  
19 is moving forward with will allow them to properly increase the  
20 revenues to recover, and not only return to production or  
21 plugging them, but also make it a viable business.

22 I really do believe that it can be viable at the  
23 right production number. And the problem is the overall cost  
24 of improving the infrastructure, as well as the well bore from  
25 what we've seen in the past, is one of the main problems that

1 we're fighting. And I believe with capital well placed that  
2 that can be resolved.

3 Q. Okay. Here's what I'm looking at it. You've got  
4 94 wells out there shut-in right now. They haven't been  
5 tested. They are not -- they don't have the backside  
6 inhibited. They're not pumped daily. Most of them are sitting  
7 out there in various physical abandonment. People have just  
8 walked off.

9 There are -- at least in the pictures we saw -- a  
10 significant number of them hanging submersible pumps and motors  
11 off with probably what amounts to a mile of copper cable that  
12 nobody went out and got when copper was selling, you know, six  
13 months ago for phenomenal prices.

14 A. Because on a specific well like that, we have the  
15 ability to return the submersible pump to production. We need  
16 to --

17 Q. How long have those submersible pumps been  
18 sitting in there?

19 A. We did test it, and it's not functioning  
20 properly. We were planning on repairing it after rigging up  
21 and pulling it out and repairing it and rerunning it, sir.

22 Q. Okay. Are there more than one submersible pump  
23 hanging out there?

24 A. I believe there's just one submersible pump on  
25 the Crosby, yes, sir.

1 Q. We'll ask him. Okay. But nobody pulled that  
2 cable?

3 A. We did not pull the cable.

4 Q. And nobody pulled the motor, and the controller  
5 is still sitting there. And, you know, six months ago, prices  
6 for that kind of equipment was pretty phenomenal.

7 A. That is true.

8 Q. And nobody did it then. And you couldn't afford  
9 to do the work that was necessary at \$147 a barrel, and oil out  
10 there is somewhere around \$30 now?

11 A. Yes, sir.

12 Q. I guess you're going to have to convince me that  
13 you're going to be able to. I know there's value there.

14 A. Absolutely.

15 Q. But you're going to have to convince me that you  
16 can get to it economically.

17 A. Yeah, I do agree. But I do know that -- and it  
18 might serve to be beneficial to submit some of the economics  
19 we've run -- we do believe it can be done efficiently.

20 But by adding people on the management team, people  
21 that are working on the management team full-time, we really  
22 believe it can be done. I know it seems -- from the outside,  
23 it might seem tough, but we really do believe it can be done.

24 CHAIRMAN FESMIRE: Okay. Ms. Munds-Dry -- I'm sorry.  
25 Commissioner Olson.



1 COMMISSIONER OLSON: Just coming back to how many  
2 wells that you been working over, how many wells have you  
3 worked over, then?

4 THE WITNESS: We have worked over 22 wells.

5 COMMISSIONER OLSON: Okay. You've worked over 22  
6 wells, and seven actually came into compliance?

7 THE WITNESS: Yes, sir.

8 COMMISSIONER OLSON: Okay.

9 THE WITNESS: I believe the sundry notices are an  
10 exhibit.

11 CHAIRMAN FESMIRE: Ms. Munds-Dry, are you all done?

12 MS. MUNDS-DRY: I just have a few redirect questions.

13 REDIRECT EXAMINATION

14 BY MS. MUNDS-DRY:

15 Q. Mr. Hirschfeld, when you were asked about the  
16 Crosby and Gregory locations, you were asked whether you had  
17 advised Santa Fe about your change of plans. Were you aware of  
18 any requirements to advise the Santa Fe office of your change  
19 of plans?

20 A. No, ma'am.

21 Q. I believe Commissioner Olson followed up on this.  
22 I just want to make sure that we all understand.

23 The work done by Baker, was it just done on seven  
24 wells?

25 A. No, it was done on 22 wells total.

1 Q. And how many -- or why were -- those wells that  
2 were not on the list, why were those wells also worked on?

3 A. They had to be -- maintenance had to be completed  
4 to keep them either producing or return them to production.

5 Q. And I understand the new corporate structure is a  
6 little confusing, and we will have Mr. Fielder testify about  
7 that, but will Xeric remain the designated operator for the OCD  
8 in New Mexico?

9 A. Yes, ma'am.

10 MS. MUNDS-DRY: I think that's all of my questions.

11 CHAIRMAN FESMIRE: Ms. Altomare, anything on those  
12 subjects?

13 MS. ALTOMARE: If I could follow up on a couple of  
14 the Commission's questions, just for clarification. There was  
15 some mention of a possible negotiation of an Agreed Compliance  
16 Order. This was addressed at the prior hearing as well.

17 RECROSS-EXAMINATION

18 BY MS. ALTOMARE:

19 Q. You are aware that OCD policy prohibits us from  
20 entering into an Agreed Compliance Order until an operator is  
21 in full compliance with the financial assurance obligations,  
22 correct?

23 A. Yes, I did read that.

24 Q. Okay. And with regard to reporting of production  
25 and what you-all have done since the last hearing, I understand

1 that a lot of the stuff that you have been trying to do is  
2 expensive; however, filing C-115s doesn't cost you anything,  
3 does it?

4 Is that a no?

5 A. It's not our most arduous expense, no.

6 Q. Okay. Yet, as far as the one requirement in the  
7 order that was issued by the Division asking that Xeric file  
8 amended C-115s and update that information, you didn't do that  
9 either.

10 A. Well, that was another service that was  
11 contracted out, and I was informed that it was done. I guess  
12 I'll have to check with Baker and Whitney Boyd and see if that  
13 was not completed. Was that for the past two years? Because I  
14 remember seeing that in the order, and I recall that being  
15 submitted.

16 Q. Okay. It's my understanding it hasn't. If it  
17 has, then perhaps when we break I can confirm that. But my  
18 understanding is that that hasn't been accomplished.

19 A. Okay. And Baker did inform us that they had  
20 completed that. And it was right around November. I'll have  
21 to search through my e-mail again and see where that was at.

22 Q. Okay. I think that those are the only points I  
23 wanted to clarify.

24 CHAIRMAN FESMIRE: Ms. Munds-Dry, anything on that?

25 MS. MUNDS-DRY: Nothing on that.

1 CHAIRMAN FESMIRE: Commissioners?

2 Thank you very much, sir.

3 With that, we'll take a lunch break and reconvene  
4 at 1:15.

5 [Noon recess was taken from 12:06 p.m. to 1:21 p.m.]

6 CHAIRMAN FESMIRE: Let's go back on the record after  
7 the lunch break. Let the record reflect that it is 1:21 on  
8 Tuesday, February 24th.

9 This is a continuation of the regularly scheduled  
10 New Mexico Oil Conservation Commission meeting, and we were in  
11 the middle of Case No. 14106.

12 Ms. Munds-Dry, you were about to call your second  
13 witness.

14 MS. MUNDS-DRY: Yes, sir. I'd like to call Ron  
15 St. John.

16 CHAIRMAN FESMIRE: Mr. St. John, would you come  
17 forward, please. Mr. St. John, you remember that you were  
18 previously sworn in this case; is that correct?

19 THE WITNESS: Yes.

20 RON ST. JOHN

21 after having been first duly sworn under oath,  
22 was questioned and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. MUNDS-DRY:

25 Q. Would you please state your name for the record.

1 A. Ron St. John.

2 Q. And where do you reside?

3 A. Midland, Texas.

4 Q. And by whom are you employed?

5 A. Xeric Oil and Gas.

6 Q. What is your position with Xeric Oil and Gas?

7 A. I am an officer.

8 Q. Are you familiar with the application that was  
9 filed by the Division in this case?

10 A. I am.

11 Q. Are you familiar with the lands and the wells  
12 that are associated with the application in this case?

13 A. Yes.

14 Q. From a field operations perspective,  
15 Mr. St. John, did you know the state or the condition of the  
16 wells in which Xeric acquired in March of 2008?

17 A. We were aware of a lot of the liabilities;  
18 however, a lot of the environmental issues were not disclosed  
19 at the time of the acquisition.

20 Q. So yes and no?

21 A. Yes and no.

22 Q. There were quite a few questions about this from  
23 the Commission. How many partners or employees make up Xeric  
24 currently?

25 A. Currently, I think I'm the only officer right

1 now. We utilize a lot of local third-party subcontractors.  
2 That's how we get a lot of the work done.

3 Q. And when you and Mr. Collier and Mr. Hirschfeld  
4 purchased Xeric in March of 2008, if you could please clarify  
5 for the Commission how that deal or that structure was made in  
6 terms of CSC and, of course, Mr. Hirschfeld.

7 A. Right. I originally started CSC. CSC stood for  
8 Collier, St. John, Cross, and it involved Tim Collier, a  
9 gentleman named Donny Cross in Wyoming, and myself. I did  
10 that -- I made an acquisition in Wyoming on an oil and gas  
11 property, and since then -- everything was verbal with  
12 Mr. Collier. There was no stock exchange.

13 He suggested or recommended that we do it that way  
14 because he had personal issues, whatever they were. Mr. Cross  
15 was a partner. I have since bought him out, and that happened  
16 probably several months ago, six or eight months ago.

17 Q. So are you the only shareholder in Xeric at this  
18 time?

19 A. I am.

20 Q. Since March 2008, acquiring and today, what are  
21 your responsibilities in Xeric?

22 A. I oversee field operations, mainly. I rely a lot  
23 of Mr. Hirshfield for administrative stuff.

24 Q. If you would please turn to what Xeric has marked  
25 as Exhibit A. I'd like to discuss with you from the field

1 operations perspective what Xeric has attempted to accomplish  
2 in terms of its work on the ground in New Mexico.

3 Would you please identify what's been marked as  
4 Exhibit A for the Commissioners?

5 A. Exhibit A being this right here?

6 Q. I believe that's it. Yes.

7 A. Yeah. These are, I think, are a list of  
8 noncompliant wells.

9 Q. Pull it back a little bit, Mr. St. John.

10 A. Go back where?

11 Q. Mr. St. John, I'm sorry. I think you have the  
12 pre-hearing statement on the front of that. So keep going back  
13 a couple of pages. Keep going through them.

14 I believe the first page you should have on Exhibit A  
15 is a C-103 form.

16 A. Okay.

17 Q. If you could identify these documents for the  
18 Commission.

19 A. These are C-103s, I believe. Sundry notices? Is  
20 that right? It's just work to be performed on TA'd wells.

21 Q. Okay. And there are several of these C-103s?

22 A. There are several.

23 Q. Do you know how many wells are reported on these  
24 C-103s?

25 A. I'm not sure exactly how many are.

1 Q. If we could talk about or give the Commission an  
2 understanding of why this work was done from a field operations  
3 perspective, why did Xeric contract with Baker to do this work?

4 A. Well, we knew we were in violation with the OCD  
5 and that they were really concerned about getting the wells off  
6 the noncompliance list. Due to the manpower on hand in  
7 New Mexico, we really didn't have the people in place to do  
8 this. So we elected to hire Baker Energy, which is a contract  
9 operating or a contract company, and we needed help, and we  
10 entered into a contract so they could help us bring some of the  
11 wells into compliance.

12 Q. Okay. And looking here on the first page of the  
13 form C-103, what well is identified in this document?

14 A. I think this is the -- this is the Pearl Queen  
15 No. 205, West Pearl Queen 205.

16 Q. And what work was reported on this C-103?

17 A. It says right here, "Performed well repair,  
18 maintenance work on the subject well, change out pump and  
19 testing tubing." Okay.

20 Q. And I believe there's an attachment that gives  
21 the daily completion report or daily workover report.

22 A. Yes, it does, and that's from Baker.

23 Q. Explain to the Commission what was the scope of  
24 Baker's responsibility under your contract.

25 A. Baker's responsibility was to identify all wells



1 on the noncompliance list, address the problem pertaining to  
2 the well, and return to production or -- at that time, there  
3 was a little confusion. We were told that we could swab and  
4 show a little production and possibly get a little more time to  
5 regroup.

6 I'm not sure if that was -- that is an approach that  
7 we took on some wells; however, for the most part, wells that  
8 have pipe in them, we tried to return to production. And it  
9 looks to me like that's what they did.

10 Q. So without belaboring the point going through all  
11 these C-103s, is that the kind of work that was done on all the  
12 wells?

13 A. It was, yes.

14 Q. Before you can bring a well back on production,  
15 what kind of initial work needs to be done on a well before you  
16 can even get into a well?

17 A. Well, the well records were real shoddy on  
18 Xeric's stuff in New Mexico, at best. For the most part, it  
19 involved taking a workover unit out to the field, rigging up  
20 blind, actually pulling pipe, and trying to figure out what  
21 exactly was the problem.

22 We did do some integrity tests. That was really  
23 important to us. We were really concerned about the casing  
24 integrity. And we basically pulled pipe, possibly run  
25 mechanical integrity tests on the well and see if it is

1 economically feasible to return to production. If it is, we  
2 tried to return it to production. Outside of that, make plans  
3 to plug.

4 Q. Did Xeric or Baker on behalf of Xeric do any  
5 surface cleanup or work of that nature?

6 A. We did a lot of work that was not in the  
7 noncompliance order. We did a lot of cleanup work. This lease  
8 has had 40 years of neglect and abuse and whatever. The  
9 operators that had in the past, to be honest with you, were  
10 pretty non-prudent operators. So we were -- the district  
11 office did make recommendations that, look, you know, you've  
12 got a mess. Get started cleaning it up as you're doing the  
13 wells. So that's what we tried to do.

14 Q. Do you happen to know how many sites that surface  
15 cleanup was conducted on?

16 A. It's probably -- I know all three tank batteries,  
17 and we probably did 15 wells; 15 well sites, all three tank  
18 batteries. We started; we have not completed. We've made a  
19 good dent, but we are not by any mean, done.

20 Q. And in the testimony earlier, Mr. St. John, was  
21 there was 22 two wells that Baker worked on. Does that sound  
22 right to you?

23 A. That sounds pretty good.

24 Q. What are your plans then? What are Xeric plans,  
25 then, going forward?

1           A. Xeric's plans going forward is to do exactly what  
2 the Commission is wanting us to do. We're wanting to go in,  
3 and this is something -- this is not the first time we have  
4 done something like this.

5           We've bought properties that have been neglected,  
6 dilapidated properties in the past. We go in, and one of two  
7 things happens: We either put the well on production and it is  
8 either a producer or an active injector, or we plug it. It's  
9 pretty cut and dry. That's exactly what Xeric intends to do  
10 here.

11           However, this is a much larger project than we're  
12 used to dealing with. So it's been somewhat of a challenge.  
13 And we understand now, myself and Mr. Hirschfeld, that we're  
14 going to need some serious financing and help to get this done.

15           Q. There was also discussion earlier about a  
16 compliance order and setting some realistic goals, and the  
17 Commission asked about that. What is Xeric's position on  
18 entering a compliance order with the Division?

19           A. We would like to do that. But they do have to be  
20 realistic goals. We think -- just off the top of my head, I  
21 think we can do five wells a quarter. It doesn't sound like  
22 that many, but with everything else that we have going on on  
23 the surface and trying to clean up and maintain and refurbish  
24 the surface facilities to actually handle oil and gas  
25 production, we think that we can do somewhere around five wells

1 a quarter financially and with the manpower that we're going to  
2 have in place. So --

3 Q. What does Xeric see for the potential for its  
4 New Mexico properties in its wells?

5 A. We think there's a lot of upside to this  
6 property. I've seen it there, and I say that because I monitor  
7 pressures on all four corners -- speaking of the Pearl Queen  
8 unit. I've seen pressures that are real attractive in some  
9 areas of the field, which tells me that there's probably some  
10 potential there.

11 Q. Given that potential, what is your position,  
12 then, on the Division's recommendation to plug some of the  
13 wells as it mentioned earlier?

14 A. I think you have to be real selective about what  
15 you plug. I think the wells that need to be plugged need to be  
16 plugged. I think wells that can go on and be put back on  
17 production and become economically feasible to produce that oil  
18 at \$36 a barrel, I think it needs to be done.

19 I think it's not only revenue for us and allows us  
20 to -- gives us capital to move on and do other work on other  
21 wells in the field and in other leases that are in the State of  
22 New Mexico, but I think that that's something that needs to be  
23 done.

24 Q. And Mr. --

25 A. We certainly don't need to plug all of them.

1 Q. I'm sorry to interrupt you.

2 A. I don't think we need to plug all of them.

3 Q. And I mean to ask you, Mr. St. John, when we were  
4 talking about Exhibit A, do you know if all these C-103s were  
5 actually filed with the district office?

6 A. I don't know if they were. I'm not sure if they  
7 were filed or not. I know they were signed by Whitney Boyd,  
8 which is a compliance agent for Baker.

9 Q. Was that part of Baker's responsibilities --

10 A. Yes, it was.

11 Q. -- to file these?

12 A. Yes.

13 Q. I believe that's all the questions I have for  
14 you, Mr. St. John.

15 MS. MUNDS-DRY: At this time, Chairman Fesmire, I  
16 move the admission of Exhibit A.

17 CHAIRMAN FESMIRE: Any objection?

18 MS. ALTOMARE: No objection.

19 CHAIRMAN FESMIRE: Exhibit A will be admitted into  
20 the record.

21 [Respondent's Exhibit A admitted into evidence.]

22 CHAIRMAN FESMIRE: Ms. Altomare?

23 MS. ALTOMARE: Thank you, Mr. Chairman.  
24  
25

## CROSS-EXAMINATION

BY MS. ALTOMARE:

Q. Mr. St. John, you said that you were an officer with Xeric. What is your official title?

A. I'm president.

Q. Okay. You indicated that Xeric at this point would be interested in doing an Agreed Compliance Order with the Division. You do understand at this point that we are well beyond that point in time, that we had been at that stage a long time ago at the point where we were discussing the possibility of trying to informally resolve this, and we are not at the hearing point?

A. No. I wasn't aware that we were well beyond that.

Q. Okay. Do you recall the Division informing Xeric that before we even would consider discussing an Agreed Compliance Order, Xeric would have to post all of their required financial assurances?

A. I know you've been requesting that we do post financial assurance bonds.

Q. Okay. You are the person that has been described as the individual who's responsible for basically what's going on out in the field?

A. I am.

Q. Yet you don't seem to know much about whether or

1 not stuff has been filed, what has actually been done.

2 A. That's more on the administrative side.

3 Q. Okay. But neither you nor Mr. Hirschfeld seems  
4 to have a whole lot of answers about exactly what all has been  
5 completed at this stage in the game, and we're sitting here at  
6 hearing with a whole lot of questions.

7 A. Completed as to what?

8 Q. As to how far along you've come, for instance,  
9 with these 22 wells that you're now putting forward as an  
10 example of your efforts so far to come into compliance.

11 A. Uh-huh, uh-huh. I think there's a lot more than  
12 that, to be honest with you. As a matter of fact, I think  
13 there's several that's on that list that's already been  
14 plugged. The paperwork just hasn't been filed.

15 Q. Have you and the other individuals sat down and  
16 come up with a plan of action for coming into compliance?  
17 You've mentioned a couple of figures as to what you think are  
18 realistic numbers for bringing wells into compliance.

19 A. Yes.

20 Q. And who all has sat down and discussed that?

21 A. We're talking with Resilient, which will be  
22 Mr. Fielder, and Adam and I have spoke. And we're trying to  
23 come up with a good solid game plan that makes sense.

24 I don't want to make commitments that I can't follow  
25 through on.

1 Q. Okay. And when you reference Adam, are you  
2 talking about Mr. Hirschfeld?

3 A. Mr. Hirschfeld.

4 Q. And he is the individual that's responsible for  
5 handling budgeting concerns and whatnot?

6 A. He helps. Yes, he does.

7 Q. He didn't seem to have any answers about how much  
8 it was going to cost or what you-all anticipated it was going  
9 to cost, how many wells you anticipated being able to bring  
10 back on line given a time period. Had you talked solid numbers  
11 yet? Or were you still in the hypothetical stages?

12 A. Well, now you're referring to the five wells per  
13 quarter and what it would cost to bring those five wells per  
14 quarter in?

15 You know, it depends upon whether we actually put  
16 them on production or if we plug them. Mr. Fesmire's estimate  
17 at \$42,000 apiece to plug them is probably pretty close. Now,  
18 if we go back in and put them on production, it may be a little  
19 more than that.

20 [Record was read by the reporter.]

21 Q. (By Ms. Altomare): So had you-all talked  
22 ballpark figures, or had you-all come up with firm numbers in  
23 terms of the five wells per quarter?

24 A. We have talked ballpark figures because there's  
25 going to be a big difference between returning them to



1 production and plugging. I mean, plugging them is pretty cut  
2 and dried. Returning them to production, depending on if it's  
3 a producer or an injector, what equipment's going to be  
4 involved or how much is going to be purchased, so the process  
5 will vary there.

6 Q. All right. And in those discussions, were  
7 posting of the overdue single well bonds part of the  
8 calculations?

9 A. We've talked about that. I'll be honest with  
10 you, that's just not really an option for us -- or for me at  
11 this time.

12 Q. Okay. So the figures for the overdue well bonds  
13 did not come into the calculations for those discussions?

14 A. No.

15 Q. Might that be why, for instance, the clerical  
16 error of the 50,000-foot depth versus the 5,000-foot depth  
17 wasn't caught by you-all?

18 A. The 50,000-foot well was caught by us. And as a  
19 matter of fact, I don't think that's the only one. I think  
20 there's several. We don't own anything deeper than 8,000 feet.  
21 We certainly don't -- I don't think there is a well in New  
22 Mexico 50,000-foot deep. You know that. I know that.

23 CHAIRMAN FESMIRE: There's no well anywhere  
24 50,000 feet deep.

25 THE WITNESS: And that's not the only conflict. I

1 think you guys have as many clerical problems as we do. I  
2 mean, as far as that goes. But we're willing to work it out.  
3 What's fair is fair.

4 Q. (By Ms. Altomare): But in any event, you-all  
5 have not gotten to the point where you have performed those  
6 calculations in such a way that you are ready to come to the  
7 OCD and talk figures about actually posting the bonds?

8 A. No.

9 Q. Okay. So you have testified that at this point  
10 in time it's your position that Mr. Collier and Mr. Cross are  
11 no longer involved at all in Xeric or CSC?

12 A. That's correct.

13 Q. You are the remaining shareholder in Xeric and  
14 are now partnering up or otherwise becoming involved with  
15 Resilient with Mr. Fielder to move forward with trying to get  
16 things resolved with these properties?

17 A. That's true.

18 Q. Okay. Are you aware that when -- if you were to  
19 have come in as a brand new operator -- like, for instance, if  
20 you had joined forces under Resilient under Resilient's name  
21 and simply transferred Xeric's wells into Resilient's name --  
22 you-all would have been required to have posted each of those  
23 bonds prior to even transferring those wells into your  
24 operator's name --

25 A. Yes.

1 Q. -- under New Mexico rules?

2 A. Yes.

3 Q. So in a way, by simply taking over the Xeric  
4 name, you're side-stepping that obligation or putting it off?

5 MS. MUNDS-DRY: Objection, Mr. Chairman.

6 THE WITNESS: By taking over the --

7 CHAIRMAN FESMIRE: Wait a minute. Wait a minute.

8 Your objection is, Ms. Munds-Dry?

9 MS. MUNDS-DRY: We're getting into an argumentative  
10 state of mind here.

11 CHAIRMAN FESMIRE: You're objecting to a state of  
12 mind?

13 MS. MUNDS-DRY: I'm objecting because this is getting  
14 argumentative.

15 CHAIRMAN FESMIRE: Okay.

16 MS. ALTOMARE: I'm going to get at what  
17 Mr. St. John's understanding of what the obligations are with  
18 the bonding requirements.

19 CHAIRMAN FESMIRE: Okay. Rephrase the question, and  
20 make it a question.

21 Q. (By Ms. Altomare): As an operator coming in,  
22 having taken over Xeric rather than coming in under a new name,  
23 what is your understanding of the obligations for the financial  
24 assurance requirements?

25 A. We weren't aware of the financial assurance bond

1 until, I think, the day of closing. Anyway, we weren't aware  
2 of it -- not on a per well basis. We thought it was a blanket  
3 bond. That's the way we operate in other states.

4 Q. Okay. Are you aware that if you had come in  
5 under a different name that before you could even take those  
6 wells in your name you would have had to post those bonds  
7 first?

8 A. I wasn't aware of it at the time. I am now.

9 Q. Okay. And again, you were not present at the  
10 April 15th telephone conference between Mr. Collier and the OCD  
11 either, right?

12 A. No, I was not.

13 Q. But at that point in time, Mr. Collier was acting  
14 on behalf of Xeric?

15 A. He was. And I believe Mr. Cook -- is that  
16 correct?

17 Q. Yes.

18 A. Mr. Cook is a previous owner.

19 Q. And you are aware and do not deny that  
20 Mr. Collier did make representations on behalf of Xeric to the  
21 OCD in that telephone conference?

22 A. Yes. I'm not aware of what was said or actually  
23 what the conversation was about. I was not even in the state,  
24 so --

25 Q. And do you recall attending the June conference

1 that occurred here in the Santa Fe offices of the OCD?

2 A. I did. I did.

3 Q. And do you recall that Xeric collectively -- that  
4 being you, Mr. Hirschfeld and Mr. Collier -- made certain  
5 commitments to the OCD to provide us with certain information  
6 about your efforts at coming into compliance?

7 A. Yes, ma'am, I am.

8 Q. And Xeric never followed through with regard to  
9 those obligations; is that right?

10 A. Mr. Collier was appointed to be the contact man  
11 between the OCD. I think you agree with that. Mr. Collier  
12 didn't follow through.

13 Q. But you do agree that he was working alongside  
14 you and Mr. Hirschfeld? You-all were working as Xeric at that  
15 time?

16 A. Yes.

17 Q. Okay. Do you remember at that hearing it being  
18 emphasized -- I mean, at that meeting -- it being emphasized at  
19 that meeting one of the biggest priorities for the OCD was  
20 being kept in that loop? That the OCD be informed and be kept  
21 apprised of what your efforts were so that we knew that you  
22 were making an effort to stay on top of it?

23 A. Yes, ma'am.

24 Q. During that time period between June and  
25 ultimately the hearing in September, where were you working

1 during that time? Were you here in New Mexico, or were you --

2 A. I was in the process of moving from Wyoming to  
3 Texas.

4 Q. Okay. And who was here, actually, in the State  
5 of New Mexico working on the New Mexico wells?

6 A. We had third-party contractors, local contract  
7 pumpers, roustabouts. We basically just assumed the previous  
8 owners, the people that they had in place, which were all  
9 third-party contractors. And they were all just to keep the  
10 ball kind of going until we could get relocated.

11 Q. And who was overseeing that connection with the  
12 previous owners?

13 A. The previous owner actually volunteered to do  
14 that for about 30 days. I would do some via telephone.

15 Q. Okay. Was there a formal agreement with the  
16 previous owner as part of the transfer?

17 A. Verbal.

18 Q. Okay. When did you become aware that Mr. Collier  
19 was not following through on the commitments that had been made  
20 at the June meeting?

21 A. That was -- it was like four months after that.  
22 It was several months. I know several months had went by  
23 because I wasn't here. I was in the process of relocating to  
24 move down. And it had come to our attention that he had not  
25 been in contact and had not followed through with what he had

1 told you he was going to do.

2 Q. Had you during that time made any effort to  
3 follow-up to make sure to see what the status was with the  
4 New Mexico properties?

5 A. I have made -- I had very little contact.

6 Q. Upon finding out that Mr. Collier had not been  
7 following through on his obligations, what action did you take?

8 A. Well, we were not pleased, to say the least. And  
9 that was probably one of the reasons why Mr. Collier left.

10 Q. "We" being you and Mr. Hirschfeld?

11 A. Uh-huh.

12 Q. Okay. And what did you do at that point in time?

13 A. Well, Mr. Collier left, and we tried to step in  
14 and do the best we could. But it was unfamiliar territory for  
15 me for sure and Mr. Hirschfeld also. So at that point, we  
16 tried to make contact, and that's when we did contact -- we  
17 knew we needed help. That's when we called Baker Energy and  
18 tried to negotiate a contract with them.

19 Q. Was this prior to the hearing in September?

20 A. That was right after the hearing, I believe.

21 Q. Okay.

22 A. When we contacted Baker? Was that the question?

23 Q. Yeah.

24 A. Right after the hearing, I believe.

25 Q. Prior to the hearing in September, what steps did

1 you take to -- once you realized that Mr. Collier had not been  
2 performing?

3 A. Well, we didn't take a whole lot of steps at the  
4 time because we were very limited as to how much help we had,  
5 and we understood that we were in over our head, and that's --  
6 but we tried to keep the ball rolling; however, it probably --  
7 we didn't do a very good job.

8 Q. Okay. Do you recall providing testimony at the  
9 Division hearing regarding the Crosby Deep and Gregory leases?

10 A. I remember something about the Crosby. I'm  
11 familiar with the Crosby/Gregory lease.

12 Q. Okay. Do you remember testifying that that was  
13 where Xeric was focusing its initial efforts to begin bringing  
14 New Mexico properties into compliance?

15 A. Yes.

16 Q. And I believe it's OCD Exhibit -- I think it's  
17 Exhibit 2, but at the time, it was Xeric Exhibit C -- you  
18 submitted some sundries that had been prepared but not yet  
19 filed by Xeric indicating an intention to return ten of those  
20 wells to production or plug them.

21 A. Okay. Now, there's some confusion there because  
22 there was a sundry notice filed, and it was filed after we had  
23 closed with Xeric, but it was filed by the previous owners. Is  
24 that what you're referring to?

25 Q. No. I'm actually referring to some prepared



1 documents. If you -- I don't know if that OCD stack of  
2 exhibits is up there or not.

3 I'm actually referring to OCD Exhibit No. 2.

4 MS. ALTOMARE: May I approach the witness?

5 CHAIRMAN FESMIRE: You may, ma'am.

6 Q. (By Ms. Altomare): Let me go ahead and hand that  
7 to you. And at the time of the Division hearing it was marked  
8 as Xeric Exhibit C, and these were sundries that were prepared  
9 by Xeric but not yet filed and were proffered as evidence by  
10 Xeric in that hearing.

11 A. Okay.

12 Q. Do they look familiar to you now?

13 A. Yeah, they do. I signed them.

14 Q. Okay. What explanation do you have for the fact  
15 that these were never actually filed?

16 A. What explanation do I have why they weren't  
17 filed?

18 Q. Right. Why did Xeric decide not to file these  
19 after the hearing?

20 A. We probably refocused our attention to the Pearl  
21 Queen unit.

22 Q. And why was that?

23 A. Because of the amount of wells that were out of  
24 compliance on it versus this.

25 Q. Okay. Even though you had already begun work on

1 this particular unit?

2 A. We hadn't really begun work. We had done some  
3 surface work, cleaned off the locations, tested our dead men.  
4 We removed some equipment that was full of oil and leaking. We  
5 cleaned all that out, shipped it out. It had been there for  
6 years.

7 As far as rigging up and doing the work on the well,  
8 at that time we did not. We elected to go to the Pearls.

9 Q. So, actually, on three of these, though, you had  
10 deadlines set by the BLM; is that right? They're not on those  
11 particular sundries.

12 A. They're not on those particular sundries?

13 Q. No. I believe it's -- if my notes are correct --  
14 it was the Crosby Deep No. 1, the Crosby Deep No. 3, and there  
15 was one more on the -- Crosby Deep No. 4 that the BLM had set  
16 February 1st. And I think one was the January 7th deadline for  
17 either returning to production or plugging those wells?

18 A. Uh-huh. You know, I think they had granted an  
19 extension on that. I'm not sure. I spoke with the BLM, Tricia  
20 Bad Bear in Hobbs about it. She's more interested in some  
21 environmental issues that are there for some reason.

22 Q. Those were actually the dates of the extensions  
23 that were granted by the BLM?

24 A. Were they? I guess they were. Did you say you  
25 had a copy of those sundries with you?

1 Q. I do somewhere, but --

2 A. I would need to look at them.

3 Q. But in any event, Xeric has stopped working on  
4 those sites; is that right? For the time being?

5 A. We've gone about as far as we can go until we do  
6 rig up. Yes.

7 Q. With regard to the Crosby Deep No. 2, there is  
8 actually some environmental issue on that site with regard to  
9 some stained soil and some leaking around the wellhead; isn't  
10 that right?

11 A. Yeah.

12 Q. And Xeric has stopped working that site even  
13 though that hasn't been cleaned up yet?

14 A. We've stopped the problem. There was vessels and  
15 different problems out there leaking, and there had been for  
16 several years. We emptied the vessels and had the fluid  
17 disposed of properly, actually took vessels in, and they're not  
18 even on location.

19 The wellheads, yeah, you're probably right.

20 Q. But the soil hasn't been remediated, and the  
21 debris hasn't been cleared?

22 A. No. There's some environmental issues; however,  
23 the landowner is real cooperative with us over there, and he's  
24 working with us also.

25 Q. Out of the 22 sundries that you've submitted

1 today as evidence of the work that Xeric has been performing  
2 since the last hearing, only a portion of those wells actually  
3 are wells that are involved in this particular action out of  
4 the 88 that were noted in this case; isn't that right?

5 A. Okay. Yeah.

6 Q. Does that surprise you that not all of them  
7 actually were in noncompliance and involved in this case?

8 A. No, that doesn't surprise me. If there was a  
9 noncompliant well in one area and we had a well that was  
10 capable of producing or being put back on production, we would  
11 catch it while we were there.

12 Q. Okay. And out of the 22, only seven of them  
13 actually have been brought back into full compliance since the  
14 efforts that have been brought about through Baker; is that  
15 right?

16 A. Yes.

17 Q. Have you personally had any contact with the  
18 district office since the September hearing?

19 A. Yeah. I've seen -- I've talked with Buddy Hill  
20 and Larry Johnson. They were both out there.

21 Q. When was the last time you had contact with them?

22 A. That was in November, I think.

23 Q. And what was that discussion about?

24 A. They were out at the site doing some stuff, and I  
25 just happened to run into them.

1 Q. But it wasn't an appointment or a specific  
2 meeting initiated by you to discuss the status of Xeric --

3 A. No, no.

4 Q. -- or your efforts to come into compliance?

5 A. No.

6 Q. Okay.

7 A. A lot of that was coordinated through Baker.

8 Q. Is Mr. Hirschfeld, even though he's not an  
9 officer going forward, still going to be the primary person  
10 responsible for the administrative issues?

11 A. He will play some part in that; however, it'll  
12 probably be handed off to someone that's more experienced.

13 Q. Okay. Do you know who that someone will be?

14 A. Not yet.

15 Q. Will it be somebody through Resilient?

16 A. It'll be a decision through Resilient and myself,  
17 yes.

18 Q. So at this point in time, to the best of your  
19 knowledge, Xeric has no immediate plans for posting any of the  
20 single well bonds that are owed?

21 A. No, not at this time.

22 Q. And at a rate of five wells per quarter -- is  
23 that what you said?

24 A. That's being realistic.

25 Q. Are you saying "quarter" as in quarter year?

1 A. As in four months.

2 Q. So --

3 A. That's only the wells on the noncompliant list.  
4 That doesn't include everything else, the surface and the  
5 environmental issues that we have to address.

6 Q. So at that rate -- I'm not very good at math --  
7 how many years would it take you to bring the remaining 81  
8 wells --

9 A. Well, I'm not very good at math either, so have  
10 you got a calculator?

11 Q. Four years, approximately four years, to bring  
12 the 81 wells back into compliance?

13 A. I think so, and I think that's a reasonable  
14 amount of time.

15 Q. And during that time Xeric would be posting the  
16 overdue bonds when?

17 A. Xeric would be posting --

18 Q. The single well bonds that are owed, when would  
19 you foresee?

20 A. You know, I can't give you an accurate date. I  
21 wish I could; I can't. I think Mr. Hirschfeld told you that  
22 we're not financially capable of posting bond.

23 Q. But the five wells per quarter is based on simply  
24 focusing your finances on bringing those back on line and not  
25 considering posting bonds at all?

1 A. That would be my assumption.

2 Q. So the number would be reduced if you had to  
3 consider posting bonds in addition to funneling money into  
4 resources into --

5 A. We would rather put the money back into the  
6 property, not only to clean it up and to get into compliance --  
7 I don't have \$750,000 to give to you for you to hold in an  
8 account somewhere. I mean, I just don't have it.

9 MS. ALTOMARE: Okay. I think that's all I have.

10 CHAIRMAN FESMIRE: Commissioner Bailey?

11 EXAMINATION

12 BY COMMISSIONER BAILEY:

13 Q. I don't understand how the previous owner filed  
14 sundries with the BLM months after the sale of the company.

15 A. We don't either. It was Walter Keen. He  
16 actually signed the sundry notices. We closed in March, and he  
17 sent them like the end of March. We have no explanation why he  
18 done that, and we contacted the BLM offices in Hobbs and  
19 actually talked to Tricia Bad Bear -- she's a representative  
20 for the BLM -- and told her what happened.

21 And we don't -- I don't have an answer for that. I  
22 don't know why he did.

23 Q. Not at your direction or not at your request?

24 A. No, ma'am. We had nothing to do with it.

25 Q. Baker Energy is no longer under contract with

1 you. Do you intend to renew a contract with them?

2 A. With Baker, probably not. We think we can find  
3 local contractors, and since I've moved down here now, it would  
4 be my responsibility to oversee those contractors. They're  
5 extremely expensive.

6 Q. You've moved down to Midland?

7 A. I have moved to Midland, yes.

8 Q. But not to Lea County?

9 A. No, I have not.

10 Q. So you have no name, no company, that you intend  
11 to rely on to help you with reworking these wells?

12 A. Sure. I have several. I've used Rico Well  
13 Service. I've used several different well service companies in  
14 Lea County. I've used four or five different roustabout  
15 companies.

16 Q. But don't have any of them under contract?

17 A. No. That takes about a phone call.

18 Q. Do you own any equipment yourself?

19 A. You know, I've got trucks, pickups, and stuff  
20 like that. Are you talking about workover rigs?

21 Q. Yes.

22 A. No, ma'am, I don't.

23 Q. Have you ever operated in New Mexico before?

24 A. Not New Mexico; Texas.

25 Q. Resilient Energy owns Xeric. What other



1 companies does Resilient Energy own?

2 A. Resilient's got some other entities not involved  
3 in oil and gas. Mr. Fielder can answer that for you. The only  
4 thing I'm interested in is oil and gas assets, and I  
5 participate with Resilient in that.

6 Q. Is Xeric the only company that you are involved  
7 with right now?

8 A. Yes, ma'am.

9 COMMISSIONER BAILEY: That's all I have.

10 CHAIRMAN FESMIRE: Commission Olson?

11 EXAMINATION

12 BY COMMISSIONER OLSON:

13 Q. Yeah. I have some questions, maybe, just  
14 starting with the corporation again.

15 You said that you're the president of Xeric now.

16 A. Right.

17 Q. I thought the last hearing -- or our previous  
18 witness here was president of --

19 A. Actually, Tim Collier was. Mr. Collier was.

20 Q. Back in September?

21 A. Yes.

22 Q. And when did that change?

23 A. That -- in September, also, I believe.

24 Q. After the hearing?

25 A. He didn't show up. He wasn't here for the

1 hearing.

2 Q. But I thought you just said he was president at  
3 the time of the hearing.

4 A. He was. And that's -- we made the changes  
5 shortly before the hearing, but they weren't -- he just kind of  
6 dropped off the radar. So --

7 Q. Well, I guess I come back to, how come you  
8 haven't registered as a corporation in New Mexico?

9 A. Xeric --

10 Q. It sounds like you've had several changes of  
11 officers, and none of that is reflected in any of the State  
12 records as even being in existence.

13 A. It's -- Mr. Hirschfeld could probably answer that  
14 for you. I know we're registered in the state of Texas.  
15 Xeric's been around. And I know this is kind of off the  
16 subject. It was started about 25 years ago by a gentleman in  
17 Midland, Texas, by a gentleman named Randall Capps.

18 Randall Capps started Xeric. He had good intentions.  
19 About like us, he didn't have a very big wallet. But, you  
20 know, the guy went on to be successful. Unfortunately, he left  
21 New Mexico with not such a good reputation. And we just seen  
22 an opportunity.

23 Then Mr. Cook had acquired it from Mr. Capps, and  
24 that's -- they had bought Xeric. We ended up making a deal. I  
25 brought some properties off of Mr. Cook, which had already

1 bought Xeric off of Mr. Capps. I had bought some properties in  
2 Montana off of Mr. Cook. And then he approached me to buy  
3 these properties in New Mexico. And that's kind of how all of  
4 this come about.

5 So -- but to answer your question: Why aren't we  
6 registered in the State of New Mexico? I don't know.

7 Q. Well, then coming back to the corporation -- and  
8 maybe I heard you wrong -- but I thought you said when you  
9 started your testimony that you were the only shareholder of  
10 Xeric.

11 A. Of CSC.

12 Q. Of CSC?

13 A. CSC, yes. And now I'm the sole shareholder of  
14 Xeric at this time.

15 Q. But I thought under the prior testimony we just  
16 had that Resilient was the sole shareholder of Xeric.

17 A. No. Resilient is not a shareholder right now.  
18 We're trying to get a deal with Resilient to obtain financing  
19 for us and participate with us as a joint venture. And yes,  
20 Resilient will be, but right now they're not.

21 CHAIRMAN FESMIRE: Ms. Munds-Dry, would you like to  
22 take a few minutes to talk to your witness?

23 MS. MUNDS-DRY: Yeah. We can do it one of two ways.  
24 We can clean it up with Mr. Fielder, and if you wouldn't mind,  
25 take a break with Mr. St. John, whichever you prefer.

1 CHAIRMAN FESMIRE: It's pretty much up to you, but we  
2 have some pretty conflicting testimony.

3 MS. MUNDS-DRY: If you wouldn't mind, if we could  
4 take just a five-minute break.

5 CHAIRMAN FESMIRE: Okay. Why don't we take a  
6 five-minute break and reconvene here at a quarter after 2:00.

7 MS. MUNDS-DRY: Thank you.

8 [Recess taken from 2:08 p.m. to 2:13 p.m., and  
9 testimony continued as follows:]

10 CHAIRMAN FESMIRE: Let the record reflect that this  
11 is the continuation of Case No. 14106.

12 The record should also reflect that all the  
13 Commissioners are still present.

14 Ms. Mund-Dry, you were in the middle of -- no.

15 MS. MUNDS-DRY: I think it was Commissioner Olson who  
16 was in the middle of an examination of Mr. St. John.

17 CHAIRMAN FESMIRE: Commissioner Olson was in the  
18 middle of the examination of Mr. St. John. Commissioner Olson?

19 Q. (By Commissioner Olson): I guess maybe just to  
20 make sure I'm clear.

21 A. I was a little confused about the question. I'm  
22 sorry. But there has been --

23 CHAIRMAN FESMIRE: Well, why don't you let him ask  
24 the question.

25 THE WITNESS: Okay.

1 Q. (By Commissioner Olson): I guess my first  
2 question was, I thought you said when you started your  
3 testimony that you were the sole shareholder of Xeric. But  
4 then a prior witness had said that Resilient was the only  
5 shareholder of Xeric.

6 A. Uh-huh.

7 Q. Can you clarify that?

8 A. Yes. Resilient is a part of Xeric. That was  
9 effective January 1; however, the paperwork has not been  
10 completed. That's where I got confused. All the documents  
11 have not been completed and signed, but it was dated and  
12 effective January the 1st. I'm sorry about the confusion.

13 But Resilient is -- and Mr. Fielder can bring you up  
14 to speed on that. They are a partner of Xeric.

15 Q. But I guess is that the sole shareholder? Is  
16 that the Resilient?

17 A. Yeah. They will be, yes.

18 Q. They will be once the paperwork --

19 A. It's effective -- it's effective January 1st.  
20 But we still have some paperwork lingering out there. We're  
21 not completely closed.

22 Q. And you're not closed between -- of the deal  
23 between Xeric and Resilient?

24 A. No. There's a document, I think, that's  
25 requiring a signature. We're just waiting on it to come in.

1 And as soon as that's in, we're effectively -- I mean, then  
2 we're closed.

3 Q. And whose signature are you waiting on?

4 A. We're waiting on a document to be drawn up, and I  
5 think the signature that we're waiting on is -- it's an opinion  
6 letter from an attorney is what it was.

7 MS. MUNDS-DRY: It's not me, Commissioner Olson.  
8 Just so you know they're not waiting on me.

9 THE WITNESS: I just know there's a document floating  
10 around. We're waiting on a signature. It was all effective  
11 January 1. I'm sorry. I just didn't remember it.

12 Q. (By Commissioner Olson): So I guess I'm still  
13 trying to figure out who's on first.

14 A. Right.

15 Q. And so Collier left in September?

16 A. Yes.

17 Q. And was he bought out or what?

18 A. No. CSC is how kind of all this started. I  
19 started CSC. Collier and I had a verbal agreement. I don't  
20 know what his personal issues was. He said, "Look." He said,  
21 "At some point, I cannot be an officer of CSC." And I said  
22 fine.

23 There was myself and another gentleman up in Wyoming,  
24 Donny Cross. At some point, Donny couldn't go on with the  
25 things that we were doing, so I made an offer to buy him out.

1 I did buy him out. I am the sole owner of CSC, which CSC went  
2 in and bought Xeric. Okay?

3 I know it's confusing. If I had it all over to do  
4 again, I wouldn't probably do it.

5 Q. But I guess if Collier was a principal, how did  
6 you not buy him out?

7 A. It was verbal. We had nothing on paper. He had  
8 personal issues. I don't know what those were. And he just  
9 elected not to be a director of CSC. He could not at the time  
10 for personal reasons. I don't know whether he had a  
11 conflicting business interest somewhere else. I really don't  
12 know.

13 Q. And what kind of an entity is CSC then?

14 A. It's an LLC.

15 Q. It's an LLC.

16 A. Uh-huh. It's a Wyoming corporation or LLC.

17 Q. I don't know if that entirely cleared it up. So  
18 did Collier leave any kind of money on the table with this  
19 whole deal?

20 A. No.

21 Q. He brought nothing? What did he bring to this  
22 deal?

23 A. He didn't bring anything except his expertise. I  
24 met him in Wyoming. I had prior commitments to another company  
25 to do some projects. I had made an acquisition with a company

1 out of Midland, Texas, bought some property in Sweetwater  
2 County, Wyoming. I had no help at that point.

3 That's when I went out and recruited Mr. Cross and  
4 Mr. Collier to help and offered them part of the company.  
5 Mr. Cross -- at the time, Mr. Collier couldn't take his part  
6 because of conflicting business dealings somewhere else, but I  
7 recruited them as help and offered them part of the company to  
8 actually help me.

9 Q. When you say to help you, was that to help run  
10 the company?

11 A. To help -- I had prior commitments on another  
12 project in Wyoming, so I offered them this so they would  
13 actually go to the field. They had a lot of expertise in  
14 drilling and completions, and I actually -- I didn't have any  
15 help at the time. So -- and I had done this acquisition and  
16 ended up with it and had some work to be done, and I just had  
17 prior commitments. So that's how I got involved with those  
18 two.

19 Q. Well, I guess some of the discussion we had going  
20 on was about Collier not keeping promises, as I understand, and  
21 was coming up with testimony with the Division that was made on  
22 behalf of Xeric.

23 A. Uh-huh.

24 Q. And then when did you find out about that?

25 A. About Collier not following through?



1 Q. Right.

2 A. It was before the hearing because he didn't show  
3 up for the hearing. But we had found out like in August. I  
4 think the hearing was in September.

5 Q. So how did you find out?

6 A. Well, for one thing, I think Mikal or the OCD had  
7 contacted our lawyer. And anyway they had some complaints. We  
8 just knew that it wasn't getting done. I think myself and  
9 Mr. Hirschfeld had asked him some questions, and at that point,  
10 the answers weren't clear, and we knew that something was  
11 probably up.

12 So it was pretty inconsistent, and he had other  
13 things that he kind of was off doing too. So we didn't feel  
14 like his main focus was Xeric either.

15 Q. Well, I guess maybe -- to make sure I heard you  
16 correctly, I thought you said that you found out about the per  
17 well bonding at the closing.

18 A. Yes.

19 Q. Well, if you --

20 A. Well, there was a petition filed. We closed on  
21 March -- we closed in March. It was like March the 5th.

22 CHAIRMAN FESMIRE: Of what year?

23 THE WITNESS: 2008, last year.

24 CHAIRMAN FESMIRE: And "we" being CSC, owning Xeric?

25 THE WITNESS: Yes, sir. And then I think -- didn't

1 you-all file the paperwork like two days after that? I don't  
2 have the dates. I know you filed -- the OCD filed some  
3 paperwork like one or two days after we had closed with Xeric.

4 Q. (By Commissioner Olson): But you're saying you  
5 found out at the closing, right? If you found out at closing  
6 there was a per well bond which was quite substantial for the  
7 number of wells --

8 A. We weren't clear. I had never operated in the  
9 State of New Mexico. I was not real clear on exactly -- I know  
10 this is totally different than Texas or any other place I have  
11 operated, but I was not clear of the single well bond financial  
12 assurance. I wasn't. And it was not disclosed by the previous  
13 owners.

14 Q. I guess I thought you were saying that you found  
15 about per well bonds at the closing.

16 A. We knew there was a bond required, and that bond  
17 was posted. But we did not know about the single well bond.  
18 We knew there was a bond requirement. I don't remember exactly  
19 what it is, and we had that bond up. We still do. But we  
20 weren't aware of the single well bond until later.

21 Q. Okay. And I guess I'll stick with the bonding  
22 issue for a second. I think you were testifying that the  
23 single well bonds are just not an option for you; is that  
24 correct?

25 A. I don't -- right now, to come up with -- I think

1 it's \$700,000, right? Or somewhere pretty close to there, 680  
2 or something. That's just not something I think we can do at  
3 this time.

4 Q. But then you're saying you can do something on a  
5 long-term basis. So how do we, then, guarantee that actually  
6 this will get done? That's part of the reasons why there's a  
7 single well bond out there is to guarantee that certain things  
8 will happen.

9 And how do we guarantee that you'll actually perform?  
10 Because during the past history of Xeric, how will we look to  
11 actually see that it's been performed?

12 A. I understand the past history is not good with  
13 Xeric. I'm open to suggestions on whatever we can come up  
14 with. I mean, if I commit to do five wells per quarter, and  
15 you want a bond on those five wells, and then when I complete  
16 the five wells, I get my bond back and put it on another five.

17 I'm willing to be fair. Whatever is -- I'm open to  
18 suggestions. I'm not -- but I want to be realistic. I want  
19 these to be goals that we can accomplish. But as far as coming  
20 up with \$680,000, \$700,000, you know, right now that's not an  
21 option for us. I just don't have it.

22 Q. Well, I guess back on the performance, you're  
23 saying that you can do five wells per quarter.

24 A. Yes.

25 Q. And, oh, speaking of math, I think you said a

1 quarter was four months. It would actually be three months.

2 A. Okay, it would be three months. So that's a  
3 little over one well a quarter -- or a month.

4 Q. But then I guess, looking right now, you  
5 purchased this back in March of 2008 with the idea of bringing  
6 these things -- knowing they were noncompliant -- bringing them  
7 into compliance, and in a nine-month period you only brought  
8 seven wells into compliance.

9 A. Right.

10 Q. So that's not -- even there is not what -- the  
11 five wells a quarter that you're talking about. So how do  
12 we -- I'm saying look at it already. You didn't meet it last  
13 year. How are you going to meet it this year?

14 A. Last year we went through a lot of changes. For  
15 one, the people that we had helping us, the Collier deal, I  
16 mean, that was a big issue for us. This guy had all the  
17 experience in New Mexico. I mean, I had none.

18 And I was relying a lot on -- that's one of the  
19 reasons why we did this acquisition. It was a recommendation  
20 from him. And not only that, he's the one that had all the  
21 experience in New Mexico, and I had none. So whenever he kind  
22 of dropped out of the loop, that squeezed us pretty hard.

23 Q. But then I thought you said you had first had  
24 dealings with him up in Wyoming.

25 A. We did.

1 Q. He was already operating in New Mexico at the  
2 same time?

3 A. No. He was not operating in New Mexico, and he  
4 was not operating in -- he was just helping me is what he was  
5 doing in Wyoming.

6 CHAIRMAN FESMIRE: But he was from New Mexico.

7 THE WITNESS: And he has a history with Yates  
8 Petroleum, Collier and Collier Drilling out of Artesia. He has  
9 a lot, and we were banking a lot on that. So when he kind of  
10 fell off the radar, that caused us to kind of go into a  
11 tailspin. I'm surprised we got seven of them.

12 I mean, it's off the list. But now we know what's  
13 happening here, and we're starting to get a little more  
14 organized. We know what's involved, and there is a lot  
15 involved.

16 Q. So Collier was involved in New Mexico. Is he a  
17 landowner or a mineral owner on any of these properties?

18 A. No.

19 Q. You also said that when you had taken this over  
20 that the well files were shoddy and that you were going to  
21 these wells blind. Did you ever look at the OCD well files for  
22 these wells?

23 A. We had. I wasn't real familiar with the website.  
24 I've gotten more familiar with it. We did pull up some  
25 information. The existing well files were pretty shoddy. They

1 were not complete at all. It was about like the operator that  
2 had had it previous to us. But yes, we now do. We get a lot  
3 of information off the website.

4 Q. But, I guess, if you were operating in other  
5 states, I'm sure this has come up before. Why wouldn't you go  
6 first thing to go look at the State for well records to find  
7 out what you're purchasing?

8 A. Well, there's a lot of wells here. So we did  
9 look at some. Like I say, we went a lot off the recommendation  
10 Mr. Collier had made because of his experience in New Mexico.

11 We probably didn't follow through, didn't do as much  
12 due diligence on this project as we did on previous projects.  
13 But like -- once again, we were relying a lot on his word and  
14 what he recommended. He had a history here, and it was a  
15 pretty good one.

16 Q. Well, he had the history, I guess, but he wasn't  
17 meeting the promises that he was making on behalf of the  
18 company.

19 A. Yes, and I understand that. He did not. He  
20 didn't follow through on the promises he made to us.

21 Q. Let me see if I can clarify the time frames again  
22 because I thought you were saying you didn't find out until  
23 August that the promises weren't being kept, but your prior  
24 witness was saying that it was actually -- he thought it was in  
25 June. So what's the time frame?

1           A. We had a meeting here in June with the OCD. We  
2 had to designate someone to communicate with the OCD either  
3 weekly or biweekly, bring them up to speed on exactly what we  
4 had accomplished during that two-week period of time and what  
5 was going to be accomplished in the next two weeks. Tim  
6 Collier was designated as that person.

7           It went along a couple of months there. At that  
8 time, I was still living in Wyoming. So I had other  
9 commitments up there. I hadn't yet moved down here, and I  
10 just -- so I wasn't really on top of things the way I probably  
11 should have been. But no, Mr. Collier did not do what he said  
12 he would do, either to the OCD or to us personally.

13           But that -- I know we did have a meeting in June with  
14 the OCD.

15           Q. And I guess the suggestions you're bringing up  
16 today for this five wells per quarter, is this your plan? I  
17 mean, I would think at this point since you're out of  
18 compliance, you're saying you'd like to come into some Agreed  
19 Compliance Order, but you don't seem to have anything -- any  
20 evidence to present to us of a proposed plan, other than  
21 thinking that you can do five wells per quarter.

22           A. I wasn't aware that we were supposed to come in  
23 with a proposed plan. If you would like a written plan that  
24 shows that and shows what we would like to do, then we could  
25 certainly put one together for you.

1           However, I wasn't aware that we were supposed to come  
2           in here to make a proposal on how we can get into compliance.

3           Q.   Well, I guess, what did you expect what was going  
4           to happen here today? I mean, that's the whole point of why  
5           we're here. You're out of compliance.

6           A.   We're out of compliance. We want to get into  
7           compliance. The thing about it is, the OCD wants us to put up  
8           700 grand. We're here to try and figure out some way that will  
9           not put a liability on the State but yet -- and allow us to go  
10          in and possibly clean this mess up with our money. I wasn't  
11          aware that we were supposed to have a written proposal for  
12          that; however, we'll certainly -- we'll do whatever pleases the  
13          OCD at this point.

14          Q.   Well, I thought that was the purpose of why we're  
15          here.

16          A.   Well, then, I'm not prepared. But I'd be more  
17          than happy to get you a written proposal if that's what you  
18          would like.

19          Q.   Well, I don't know if that will necessarily help  
20          us at the moment because we're having to deal with this hearing  
21          at the moment. That's kind of what the purpose of the hearing  
22          is.

23          COMMISSIONER OLSON: I think that's all I have.  
24  
25



## EXAMINATION

BY CHAIRMAN FESMIRE:

Q. Mr. St. John, we're going to re-plow the same road for a little bit. But I need to know, as of today, what is your position in Xeric?

A. I am the president.

Q. Prior to December 31st of this year, what was your position with Xeric?

A. I was -- prior to this, I was vice president, I think. I'm not exact on when the dates were. But I think I was vice president.

Q. But you said as of January 1st there were some changes. What was your position prior to the change?

A. I was president prior to the change. And the things are effective January 1. Are you talking about with Resilient? They were effective January 1, but we still have some documents that are --

Q. Okay. Immediately prior to the change with Resilient, what was your position?

A. I was president immediately -- in December, I believe.

Q. And when did you become president of Xeric?

A. It was about the time Mr. Collier left. Because we had appointed Mr. Collier president. And it was about the time that he had left.

1 Q. Okay. And do you have any idea what day that  
2 was?

3 A. That was August or September.

4 Q. Of 2008?

5 A. Of '08, yes, sir.

6 Q. Okay. Up to then you were vice president between  
7 initial close, which was in March, to August or September you  
8 were vice president?

9 A. Yes, sir.

10 Q. And immediately after vice president, you were  
11 president?

12 A. Yes. After Mr. Collier had left.

13 Q. Okay. When did you become aware for the need for  
14 the -- the requirement under the law for the individual well  
15 bonds?

16 A. That was -- I wasn't aware of it until I was made  
17 aware of it after closing.

18 Q. After which closing?

19 A. The March of '08. That's when we bought it off  
20 of Mr. Cook and Mr. King.

21 Q. So you became aware of it after you bought it --

22 A. Yes, sir.

23 Q. -- but before you became president?

24 A. Yes, sir.

25 Q. So some time in that period you became aware?

1 A. Yes.

2 Q. And you're telling us that you are not going to  
3 comply with that bonding requirement; is that correct?

4 A. I'm telling you I can't. I want to, but I can't.

5 Q. Okay. You understand that that's a requirement  
6 of the law?

7 A. Yes, sir.

8 Q. And you understand that's to protect the citizens  
9 of New Mexico from having to plug these wells?

10 A. Yes, sir.

11 Q. And you're telling me that you cannot? Why can  
12 you not comply with the law?

13 A. I don't have the \$700,000.

14 Q. Okay. Now, we've got prior testimony that said  
15 that Tim Collier was a 50-percent owner in CSC when they  
16 acquired Xeric?

17 A. No.

18 Q. That's not true?

19 A. No, sir, that's not true.

20 Q. And you realize that came from a prior witness  
21 who was the financial officer for the corporation?

22 A. No, I wasn't aware of it. Mr. Collier --  
23 everything was verbal with Mr. Collier. I don't know what  
24 issues he had, either personal or whatever. But he asked me  
25 not to document him down as an officer of CSC.

1 Q. I'm not talking about --

2 A. There's no record of ownership -- of Mr. Collier  
3 having any ownership in CSC.

4 Q. Okay. So when the prior witness told us that  
5 Mr. Collier was a 50-percent owner in CSC, he was mistaken?

6 A. Yes. It was because there's nothing documented.

7 Q. Prior to the acquisition, immediately prior to  
8 the acquisition of Xeric, who were the owners of CSC?

9 A. Me.

10 Q. Just you?

11 A. Yes.

12 Q. Immediately after the acquisition of Xeric by --  
13 the 50 percent acquisition of -- well, I don't even know if  
14 that's correct.

15 Xeric acquired what -- I mean, CSC acquired what  
16 percentage of Xeric in March of 2008?

17 A. CSC required --

18 Q. Acquired.

19 A. Acquired -- I think it was 100 percent,  
20 Mr. Fesmire.

21 Q. Okay.

22 A. I'd have to look back through my documents, but  
23 I'm sure it was. CSC had done other acquisitions previous to  
24 that. And --

25 Q. So Mr. Hirschfeld's company did not have an

1 interest at that time?

2 A. He did. You know, Mr. Hirschfeld represents a  
3 funding company, and they had a percentage. Yes, they did.

4 Q. Okay. They had a percentage of Xeric?

5 A. Of Xeric.

6 Q. So how could Xeric have acquired 100 -- I mean,  
7 how could --

8 A. CSC, Mr. Hirschfeld's company, which was a  
9 funding company -- and I'm sorry. I get confused on a lot of  
10 this.

11 Q. Me too.

12 A. Well, and -- but CSC, I think, if I remember  
13 right, it was -- it was CSC and then -- that's right. We did  
14 it 50/50. We did it 50/50. I'm sorry. CSC bought 50 percent  
15 of Xeric. Mr. Hirschfeld's company or the company he  
16 represented bought the other 50 percent.

17 Q. So you are correcting prior testimony that you  
18 had 100 percent of --

19 A. Yes. That was -- I'm sorry. But that's how it  
20 worked. I have to think back. This is in March of '08, so --

21 Q. Okay. So in March of '08, CSC owned 50 percent,  
22 and Mr. Hirschfeld represented an interest --

23 A. Of 50 percent. I believe that's right.

24 Q. So now we go into January of this year.

25 A. Okay.

1 Q. Who owns Xeric today?

2 A. Effective January 1, will be Resilient, which  
3 will be Mr. Fielder, and that's it.

4 Q. Okay. And he is buying CSC out?

5 A. He's buying Xeric.

6 Q. Okay. But who is being paid for Xeric effective  
7 January 1st?

8 A. Effective January 1st, who will be paid for  
9 Xeric? I think some of the people Mr. Hirschfeld represents.

10 Q. So Mr. Hirschfeld's company gets 50 percent of  
11 the proceeds of the sale?

12 A. Yes.

13 Q. And you get 50 percent of the proceeds of the  
14 sale?

15 A. Yes.

16 Q. Does Mr. Collier have a claim to that 50 percent?

17 A. No, sir.

18 Q. Okay. As of today, Resilient Energy owns all of  
19 Xeric?

20 A. Yes.

21 Q. And you still have a document?

22 A. Yes, sir, we do. There's one, but the effective  
23 closing date was January 1st, and that's how I got confused  
24 before. I apologize for that. I'm more a field guy. I don't  
25 really stay up to speed on the paperwork. I probably should.

1 Q. Okay. So who owns Resilient today; do you know?

2 A. Yes, I do. It's Mr. Fielder, and I'm going to  
3 participate also.

4 Q. What does that mean?

5 A. I'm going to become part owner of Resilient.

6 Q. But you are not at the present time an owner in  
7 Resilient, are you?

8 A. I will be when that document is signed, which is  
9 effective January 1.

10 Q. So your interest in Resilient will be derived in  
11 your interest in Xeric?

12 A. Uh-huh.

13 COMMISSIONER OLSON: Was there actually a buyout of  
14 your interest in Xeric, or how --

15 THE WITNESS: Yes, with Resilient.

16 COMMISSIONER OLSON: So did money change hands, or  
17 what happened?

18 THE WITNESS: Actually, it's the commitments that  
19 Resilient has made known. There hasn't been any money. It's  
20 been all an agreement that Resilient is going to come in and  
21 furnish a lot of capital to do what we need to do and bring  
22 other stuff to the table that we're not capable of doing.

23 And that's part of the buyout agreement. As far as  
24 money changing hands, I haven't made a nickle off of Xeric.

25 COMMISSIONER OLSON: I guess what's getting bought --

1 it doesn't sound like anything was actually bought. I guess  
2 I'm confused.

3 THE WITNESS: Well, we're bringing Resilient on as --  
4 I mean, they, Resilient, is going to own all the assets. And  
5 they have the capacity to go out and bring an influx of money  
6 to do the things that we want to do. And that's kind of the  
7 commitment for them.

8 But they're going to -- they have indicated to us  
9 that they're willing to bring a substantial amount to the  
10 table. We think we'll get ours on the back end.

11 Q. (By Chairman Fesmire): Okay. What are they  
12 going to do?

13 A. They're actually going to bring capital.

14 Q. Okay. But what are you going to do with the  
15 capital?

16 A. We're going to go in and rework wells and try to  
17 get into compliance. We don't want to -- I don't want to come  
18 back down here.

19 Q. Are any of those units involved in a waterflood?

20 A. They're not. Those units haven't been flooded in  
21 several years. I'll speak specifically on the Pearl Queen  
22 unit. They quit putting water in probably ten years ago. It  
23 hadn't been flooded.

24 Q. Do you intend to flood it?

25 A. Yes.



1 Q. And before you can flood it, you're going to have  
2 to plug all those wells, aren't you?

3 A. No. We plan to -- there are several TA'd  
4 injection wells that I'm assuming the integrity is good.  
5 That's one thing we'll work our way through. Producers, we'll  
6 be putting --

7 Q. Okay. Let me rephrase the question then: Before  
8 you can flood it, you're either going to have to plug or place  
9 all of those wells back on production; is that correct?

10 A. If that's what you want us to do. Part of the  
11 flood program probably is to utilize some of those well bores.

12 Q. Right. So you're either going to have to put  
13 them on production or injection or plug them.

14 A. Yes. I'm sorry.

15 Q. And, in fact, you don't intend to flood that  
16 without plugging the wells that you're not using.

17 A. Yeah. We'll plug the wells we don't use, yeah.

18 Q. Okay. And you can't flood it without plugging  
19 it, and you can't -- the upside potential on this unit, or  
20 these units, is to flood it, right?

21 A. That is some of the upside. What do you mean we  
22 can't flood it without plugging it? I mean, I'm confused  
23 there.

24 Q. You cannot flood it without plugging the wells  
25 that you're not using as either injection or producing wells in

1 the flood; is that correct?

2 A. The well bores that we will not utilize to pursue  
3 a waterflood will be plugged; however, there are several in  
4 that unit that we want to utilize.

5 Q. Okay.

6 A. To reimplement the waterflood.

7 Q. Well, essentially, what I'm saying is that you  
8 have to do something to every well out there, correct? You  
9 either have to place it on injection, place it on production,  
10 or plug it.

11 A. Yes, sir. Absolutely.

12 Q. And that's going to cost money.

13 A. Yes.

14 Q. At five wells a quarter, how long will it take  
15 you to get the -- let's just use 90 -- wells that need to be  
16 addressed? How long will that take?

17 A. Well, they're not all in that unit. Those 90  
18 wells are split between four different units.

19 Q. But you're only planning to flood one unit --

20 A. One at a time.

21 Q. One at a time?

22 A. Yes.

23 Q. But you intend to flood all the units?

24 A. The ones that we think the upside is there. No,  
25 not all of them. We won't flood the Crosby, the Gregory.

1 We'll flood probably the West Pearl, the East Pearl, the South  
2 Pearl.

3 Q. Have you had -- so 3/4s of the units and all the  
4 big units you're going to have to flood?

5 A. We can reimplement the flood. There's other  
6 options there.

7 Q. Okay. Have you had an engineering firm look at  
8 it and make those estimates?

9 A. There have been several studies over the years  
10 that's been done there. We're still in the process of working  
11 with engineers. We're seriously considering polymer.

12 Q. But polymer is expensive.

13 A. Polymer is very expensive.

14 Q. How are you going to do that on the cash flow  
15 that you're generating now?

16 A. Well, you got to start somewhere, and that's  
17 where Resilient is going to come in and furnish capital for us  
18 to do stuff like this. Yeah, polymer is expensive.

19 Q. Now, I may have asked this question, but I've got  
20 to go back through it again.

21 A. Uh-huh.

22 Q. The ownership of Resilient is Mr. Fielder and you  
23 in the future, and that's part of your agreement?

24 A. Yes, sir.

25 Q. So, in essence, you're trading a percentage --

1 since no money is trading hands -- you're trading your  
2 ownership in Xeric for ownership in Resilient --

3 A. Yes, sir.

4 Q. -- who in turn will own all of Xeric? Resilient  
5 will own all of Xeric?

6 A. Yes, yes.

7 CHAIRMAN FESMIRE: Folks, I'm going to have to step  
8 out for just a minute. I'll be right back.

9 [Discussion off the record.]

10 CHAIRMAN FESMIRE: Let's go back on the record.

11 We will continue Case No. 13957 until the  
12 March 12, 2009 docket.

13 Case No. 14149 to the March 12, 2009 docket.

14 Case No. 14150 to the March, 2009 docket.

15 Case No. 14124 was remanded to the Examiner Hearing  
16 docket.

17 Case No. 14145 has been dismissed.

18 Case No. 14134 continued to the April 9, 2009 docket.

19 Case No. 14141 continued to the April 9, 2009 docket.

20 Case No. 14278 to the April 9, 2009 Commission  
21 meeting docket.

22 At this time, Ms. Altomare, you have some follow-up  
23 questions for this witness?

24 MS. ALTOMARE: Yes. I'll try to be brief to follow  
25 up on the -- some of the questions from the Commissioners.

## 1 RECROSS-EXAMINATION

2 BY MS. ALTOMARE:

3 Q. Have you made any inquiries regarding the  
4 possibility of utilizing a surety company or a bank to post the  
5 bonds in this case?

6 A. I have not, personally.

7 Q. Do you know if Mr. Hirschfeld has?

8 A. Not to my knowledge.

9 Q. You repeatedly stated that you relied on  
10 Mr. Collier's experience, and once he left, you basically felt  
11 like you had been left without guidance in New Mexico.12 You did pretty much from the get-go have counsel in  
13 New Mexico; is that right? Legal counsel?

14 A. Yes.

15 Q. Okay. You indicated that Mr. Collier had a  
16 history here in New Mexico, and that it was your impression it  
17 was a good one. Did you ever follow up with OCD or with anyone  
18 else in industry to see what his history was here in  
19 New Mexico?20 A. Yes. I had asked around about him and his  
21 experience in New Mexico.22 Q. So did you confirm with the Oil Conservation  
23 Division?24 A. Not with the Oil Conservation Division, no. I  
25 was more interested in some of his talents, so --

1 Q. Okay. You've indicated that the Oil Conservation  
2 Division wants you to post these bonds. You understand that  
3 it's not an issue of the Oil Conservation Division wanting you  
4 to post it, but rather a requirement, a prerequisite in order  
5 for your company to continue operating in this state?

6 A. I am now.

7 Q. And it is a requirement that's imposed on all  
8 other operators.

9 A. Okay.

10 Q. At the last hearing, you testified that you were  
11 the vice president once Mr. Collier had left and that  
12 Mr. Hirschfeld was the president. Do you recall that?

13 A. I don't recall.

14 Q. Would that surprise you that for a period of time  
15 Mr. Hirschfeld was identified as the president of Xeric?

16 A. Probably. No, it wouldn't surprise me.

17 MS. ALTOMARE: For brevity's sake, I won't reference  
18 the testimony, but it is in the transcript.

19 CHAIRMAN FESMIRE: The testimony will stand for  
20 itself.

21 Q. (By Ms. Altomare): Okay. You have indicated  
22 that Resilient has the capacity to bring an influx of money  
23 which you plan to rework the wells. Do you plan to use any of  
24 that money at all to post bonds?

25 A. That's part of our discussion, yes.

1 Q. Has that been discussed in any detail with  
2 Resilient?

3 A. Not -- no.

4 Q. And finally, with regard to the waterflood, do  
5 you understand that even though you plan to do it on a  
6 unit-by-unit basis, that in order to get permission for a  
7 waterflood, you have to be in full compliance with OCD rules?

8 All of the financial assurances have to be posted,  
9 and you cannot be in violation of the inactive well rules in  
10 order to get permission to get the waterflood approved and the  
11 injection --

12 A. You had explained that, I think, at a previous  
13 hearing.

14 Q. So in order to get the waterflood project  
15 launched, you'd have to be in full compliance before that  
16 started.

17 A. Absolutely. You also indicated that we weren't  
18 entitled to any kind of drilling permits or whatever. We  
19 understand that. We understand we got a mess.

20 Q. Okay.

21 CHAIRMAN FESMIRE: Ms. Munds-Dry, do you have  
22 anything further?

23 MS. MUNDS-DRY: No further questions for this  
24 witness.

25 CHAIRMAN FESMIRE: Anything further from the

1 Commission?

2 COMMISSIONER BAILEY: No.

3 COMMISSIONER OLSON: No.

4 CHAIRMAN FESMIRE: Okay. Mr. St. John, thank you  
5 very much.

6 Again, we will reconvene tomorrow morning at 10:00.  
7 We will begin our deliberations in Case No. 14255, the Santa Fe  
8 County rules.

9 We will also continue with the docket in this case.  
10 I don't expect to start before 11:00 tomorrow. I imagine if  
11 something were to come up, we could probably take as long as we  
12 had to on the other deliberations, because I don't think we  
13 will finish before we continue this case.

14 MS. ALTOMARE: I will be back here as soon as  
15 possible and make myself available to counsel and the  
16 Commission as well.

17 I apologize, and I appreciate the flexibility.

18 CHAIRMAN FESMIRE: And I apologize to everybody who  
19 was here. I'm sorry that I have to go. We'll see you  
20 tomorrow.

21 [Hearing concluded.]

22 \* \* \*



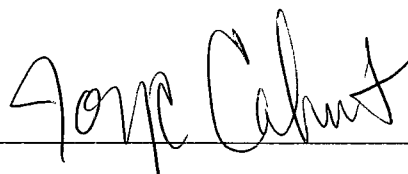
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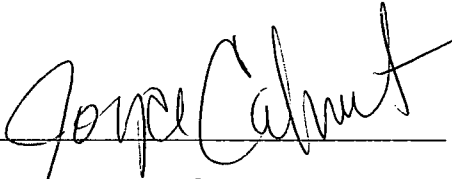
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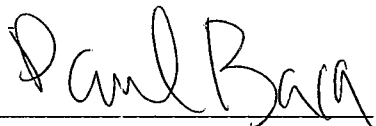
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